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HAND - BOOK
OF
PROCEDURE IN CRIMINAL CASES
BEFORE
JUSTICES OF THE PEACE
WITH
ALPHABETICAL SYNOPSIS OF OFFENCES AND
FORMS OF CHARGES.

BY
CHARLES SEAGER
CROWN ATTORNEY, COUNTY OF HURON.

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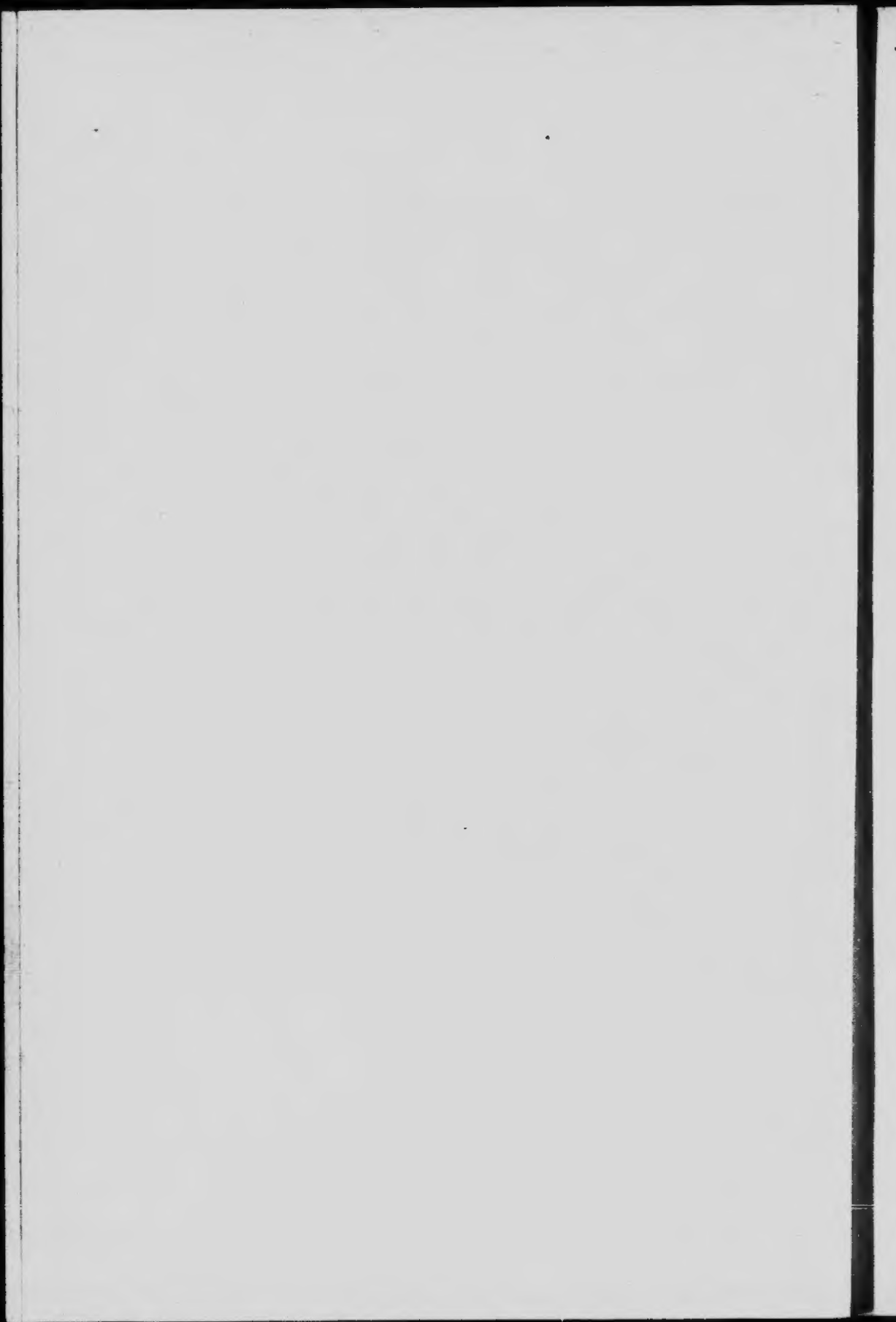
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HAND BOOK

FOR

JUSTICES OF THE PEACE.

CHAPTER I.

THE JUSTICE.

Appointment.

The British North America Act, sec. 92, sub-sec. 14, gives the Provincial Legislature power to pass statutes authorizing the appointment of justices of the peace: *R. v. Bennett*, 1 O.R. 455; *R. v. Bush*, 15 O.R. 398; and R.S.O. ch. 86, provides for their appointment, which is by Royal Commission under the Great Seal of the province.

Justices in unorganized districts are appointed under the authority of R.S.O. ch. 109, secs. 45, 46.

Ex Officio Justices.

Certain officials are justices by virtue of, and while holding their official positions; thus, a police magistrate for part of a county is an *ex officio* justice of the peace for the whole county, and has authority of two justices sitting together: R.S.O. ch. 87, secs. 27, 30; the head of every council, mayor of a city or town, reeve of a village or township, warden and members of county council, are *ex officio* justices of the peace: Municipal Act, 1903, ch. 19, sec. 473; aldermen are justices for cities.

Special Justices.

The following officials have authority as justices in connection with matters within their official charge: viz., provincial game

wardens: R.S.O. ch. 287, sec. 22; fisheries overseers: R.S.O. ch. 288, sec. 42; crown timber agents and wood and fire rangers: R.S.O. ch. 267, sec. 16; Indian agents: R.S.C. ch. 81, sec. 161; quarantine officers: R.S.C. ch. 74, sec. 7.

Judges of the Courts are *ex officio* justices of the peace for every county in the province: R.S.O. ch. 86, sec. 1.

Property Qualification.

A justice (other than one for an unorganized district, who requires no property qualification: R.S.O. ch. 109, sec. 45), must be in the actual possession of real estate (legal or equitable: *Crandall v. Nott*, 30 C.P. 63), as owner, or tenant for life, or tenant under lease for 21 years or upwards, of at least the value of \$1,200, over and above incumbrances: R.S.O. ch. 86, sec. 9.

It is not necessary that his interest in the real estate should in all cases be worth \$1,200; thus a life lease, or a lease for twenty-one years in real property of that value, is sufficient; even if the value of such life estate or lease is not worth that amount: *Fraser v. McKenzie*, 28 U.C.R. 255; *Weir v. Smith*, 19 A.R. 433; and an estate as tenant by the courtesy in the property of a deceased wife, such property being worth \$1,200, is sufficient: *Weir v. Smith*, 19 A.R. 433. The justice's interest must be *in* the real estate, and not merely a claim *on* it, such as a mortgage on land.

Oaths of Office.

An *ex officio* justice is not required to take any oath of office or of property qualification, except the oath of the office in respect of which he is such justice: R.S.O. ch. 54, sec. 13; Ont. Stat. 1903, ch. 19, sec. 475; but he must have taken the latter oath before acting as a justice: *R. v. Boyle*, 4 P.R. 256.

An appointed justice must, within three months from the date of the commission, take the three oaths of allegiance, office and property qualification; otherwise his appointment becomes absolutely revoked: R.S.O. ch. 86, sec. 12.

Forms of Oaths.

For form of oath of allegiance, see R.S.O., page 288; and forms of oaths of office and qualification at page 966. The clerk of the peace supplies these forms on application.

The oaths can only be taken before a justice of the peace who has previously qualified; or before the clerk of the peace, or a commissioner *per dedimus potestatem* appointed for the purpose by the Lieutenant-Governor in Council: R.S.O. ch. 86, sec. 10; the ordinary commissioners for taking affidavits have no authority to administer justices' oaths of office.

The oaths must be filed with the clerk of the peace, who is entitled to a fee of twenty-five cents for filing each oath, and to twenty cents for the certificate, if it is desired: R.S.O. ch. 101; items 51, 58 of tariff.

If the oaths are taken within the three months, and transmitted at once to the clerk of the peace, they will be in time, even if the latter does not receive them until after the period has expired.

A justice who took the oaths under a former commission of the peace, need not do so again under a new commission; unless he has parted with the property on which he formerly qualified; in which case he must take a new oath of qualification, but no other: R.S.O. ch. 86, sec. 15.

A justice who acts without taking the oaths, or having parted with his property has not the necessary property qualification, or does not take a new oath on a change of property qualification, is liable to a penalty for each occasion on which he so acts; same statute, sec. 16; and he may be prosecuted by indictment: *Margate v. Hannen*, 3 B. & Ald. 266.

CHAPTER II.

JUSTICES' JURISDICTION.

The authority of a justice of the peace is limited to that which is expressly conferred by, or is necessarily implied from some statute: *R. v. Carter*, 5 O.R. 567; *Cullen v. Trimble*, L.R. 7 Q.B. 416.

His jurisdiction is never presumed, but must appear affirmatively in the authorizing statute; otherwise his proceedings are absolutely void.

So the justice, before proceeding in any matter, must look to see if there is statutory authority for it, either express or necessarily implied. If, for instance, a statute relating to an offence says, that any person committing a certain act is liable to a penalty upon summary conviction (not saying by a justice of the peace), this would necessarily imply an authority on the part of any justice having territorial jurisdiction in the matter.

The laws to which a justice must look for his authority, include the Criminal Code and other statutes of Canada; the statutes of Ontario; and the by-laws and regulations of municipal councils, of police commissioners, under the Municipal Act, 1903, of license commissioners, under the Ontario Liquor License Act, of Boards of Health, under the Health Act, and other bodies authorized by statute to pass by-laws or regulations, and impose penalties for their infraction; all of which come under the authority of justices of the peace. The English criminal law, as it existed on 17th September, 1792, in force in Ontario, except where repealed or altered: section 10, 589, of the Criminal Code; *R. v. Cole*, 5 Can. Cr. Cas. 330.

In these various statutes and by-laws are to be found the provisions for the trial and punishment of offences against the

law; and the duty of administering them is imposed upon justices of the peace and the Courts of the province, as will be particularly described in the following pages.

JURISDICTION, IN REGARD TO THE PLACE WHERE OFFENCE
COMMITTED.

A justice has jurisdiction to proceed against persons charged with crime, or offences against the law, in the following circumstances only:—

1. Offences Committed in the Justice's County.

In the case of a person accused of committing an indictable offence (that is, one which the clause of the statute relating to it designates as "*indictable*"), if it was alleged to have been committed within the justice's county or territory, wherever the accused person may be at the time the proceedings are commenced: Code 653(b).

2. Offences Committed in Another County.

When the indictable offence was committed in some other than the justice's territory, but the accused is, or has his residence, within that territory or county: Code 653(a); *R. v. Burke*, 5 Can. Cr. Cas. 29.

The offence in order to give the justice jurisdiction, must have been committed (or partly committed) within the Province of Ontario; for the Courts of the province have no jurisdiction over an offence committed wholly in another province, even if the offender is in Ontario: Code 653.

If an offender is brought before a justice under Code 653(a), for an offence committed in another county, the justice may either proceed with the case himself, or send the accused to be dealt with by any justice in the county where the offence was committed: Code 665(2). In that event, the first mentioned justice is to issue a warrant (Form 9 in the schedule to the Criminal Code): Code 665(3); and a constable will then take

the prisoner, with the warrant, information and any depositions that may have been taken, to a justice for the county where the offence was committed; and the latter will continue the case, as if it had originally been brought before himself: Code 665(3), 666, giving a receipt for the prisoner and papers: Form 10. The justice for the county where the prisoner was arrested, has jurisdiction over the case, as well as the justice for the county where the offence was committed; and either may act: *R. v. Burke*, 5 Can. Cr. Cas. 29. In deciding which course to take the justice who first has the case will be guided by the considerations of expense and convenience to the parties and witnesses.

A justice has no jurisdiction if the offence was not committed, and the accused is not present, in the justice's county; except in unorganized districts, as to which see Code 585; and even if the accused should be brought before a justice on a summons or warrant, he does not under such circumstances thereby waive the objection, or come under the justice's jurisdiction: *Johnston v. Colam*, L.R. 10 Q.B. 544.

3. Receiving Stolen Property.

A justice's jurisdiction also extends to cases in which the accused is charged with having, *anywhere*, unlawfully received property which was unlawfully obtained by some other person, in the justice's county, *e.g.*, a charge of receiving stolen property knowing it to have been stolen, even if the receiving was in another county: Code 653(c).

4. Bringing Stolen Property into the County.

And also to cases in which the accused is charged with having in his possession in the justice's county, any stolen property, wherever it was stolen, either in Canada or a foreign country: Code 653(d).

5. Offences on the High Seas.

Also to all offences committed on the high sea: Code 656. The above provisions apply only to cases of *indictable* offences,

and not to summary convictions cases: See *post*, as to the distinction between indictable and other offences.

The following apply to both indictable and summary convictions cases:—

6. Offences Committed on the Boundaries of Counties, etc.

A justice has also authority over offences committed in the justice's county; or if committed on any bridge, or in any water, whether tidal or otherwise, between it and an adjoining county; or anywhere in another county, within five hundred yards of the boundary of the justice's county; a justice of either county has jurisdiction: Code 584 (a), (b). The five hundred yards are to be measured "as the crow flies": *Moufflet v. Cole*, L.R. 8 Exch. 32.

7. Offences Begun in One County and Continued in Another.

Even if the counties are in different provinces: Code 584(b); *R. v. Hogle*, 5 Can. Cr. Cas. 53; *R. v. Blythe*, 1 Can. Cr. Cas. 284. For instance, in a case where a merchant in Ontario wrote a letter to a party in Quebec and obtained goods on a false statement in such letter of his affairs, a justice in either place may take the proceedings.

8. Offences Regarding the Mails or Travellers, etc.

See the Post Office Act, and sections 3, 209, 364, 365, 366, 510 D.(b) (c) (d), of the Criminal Code; or to a mail carrier, or a letter or anything sent by mail; or a person or any property in or upon any vehicle (public or private, railway train or private carriage: *R. v. Sharpe*, Dears. C.C. 415); employed on a journey; or on a vessel employed in a navigable river, canal or other inland navigation. A person charged with any of these offences may be brought before any justice in any county through which the same passed on its journey; or if it passed along a boundary of two counties, a justice of either may act: Code 584(c). As to what are offences in or upon any vehicle, see *R. v. Sharpe*, *supra*.

9. A Person Aiding or Abetting

In one county an offence committed in another county, may be brought before a justice for either county; but only if the case is one which is punishable on *summary conviction* and not an indictable one: Code 707(2).

10. Offences Committed in Unorganized Districts,

Or on any lake or river not embraced in any organized county or district, may be taken before a justice of any county in the province, and dealt with as if the offence was committed in the justice's county: Code 585.

11. Offences Committed in the Unorganized Regions North of Ontario and Quebec,

May be brought before a justice of any county or district in either province: Code 586.

12. Offences Committed on the Great Lakes.

The boundaries of the Province of Ontario, and of each county therein, bordering on the lakes and rivers extend to the centre of such lakes and rivers; and all offences committed therein, and within such boundaries, may be dealt with by a justice for the county on which the lake or river fronts: *R. v. Mickleham*, 10 C.C.C. 382.

13. Fugitive Offenders.

Persons committing any criminal offence in any part of His Majesty's dominions, other than Canada, are to be dealt with as provided by the Fugitive Offenders' Act, R.S.C. ch. 154.

14. Justices are Keepers of the Peace.

The English statutes, 18 Edw. III. ch. 3, and 34 Edw. III. ch. 1, provided for the appointment of justices assigned to be "Keepers of the Peace"; and by the Royal Commission now issued to all justices they are charged expressly with that duty, and invested with that authority. Their duties in that regard

are prescribed by the various clauses of the Criminal Code, and will be more fully dealt with in the subsequent pages, under the title "Keeping the Peace."

15. Juvenile Offenders.

Code 800-821 give two or more justices sitting together, authority to try summarily the class of offences there specified, in which the offender is, or appears to be, under the age of sixteen years; and the proceedings are set out there.

16. Neglected or Dependent Children.

A justice also has authority to deal with children of this class, as defined by the Ontario Industrial Schools Act, R.S.O. ch. 304; and the Act Respecting the Industrial Refuge for Girls, R.S.O. ch. 310; and the Children's Protection Act of Ontario, R.S.O. ch. 259.

17. Offences Against Ontario Statutes or Municipal or Other By-laws or Regulations

Are within the jurisdiction of any justice for the county where the offence was committed.

All offences included in the above will be dealt with either by a preliminary enquiry and commitment for trial if the offence is an *indictable* one; or by summary trial and conviction; (as the case may be), as set forth in subsequent chapters of this book.

CHAPTER III.

EXCEPTIONS TO A JUSTICE'S AUTHORITY IN CERTAIN CASES.

A Justice Cannot Act:—

1. In Cases of Persons Under Disability to Commit Crime.

Infants.

A child under seven years old cannot be convicted of any offence: Code 17; and a child over seven and under fourteen years old cannot be convicted, unless it is shewn that he was competent to know the nature and consequences of his conduct, and to appreciate that it was wrong: Code 18.

The presumption is that a child under fourteen years and over seven years old does not know the nature of his conduct; but this may be rebutted by shewing that he did the act with guilty knowledge of wrong-doing; and the nature of the act itself, together with the child's conduct in connection with it, may afford proof that he had guilty knowledge: 2 Russell 115; *R. v. Owen*, 4 C. & P. 236.

A boy under fourteen is conclusively presumed by the common law to be physically unable to commit any sexual offence whatever; and this cannot be rebutted by proof of the contrary: *R. v. Phillips*, 8 C. & P. 736; *R. v. Hartlen*, 2 Can. Cr. Cas. 12. Code 298 expressly provides that a boy under fourteen is incapable of committing rape; but this provision does not supersede or exclude the above common law rule as to other sexual offences: *R. v. Hartlen*, 2 Can. Cr. Cas. 12; *R. v. Cole*, 5 Can. Cr. Cas. 330, and note. So a boy under fourteen cannot be convicted of an offence under Code 301, although proved to have arrived at puberty: *R. v. Waite* (1892), 2 Q.B. 600; nor assault with intent to commit rape: *R. v. Phillips*, 8 C. & P. 736; *R. v. Brimilow*, 9 C. & P. 366; nor of sodomy; *R. v. Hartlen*, 2 Can. Cr. Cas. 12; but he may be convicted of an indecent assault: *R. v. Williams*

(1893), 1 Q.B. 320; *R. v. Hartlen, supra*; see Code 293; or of aiding another to commit any of the above offences: 1 Hale P.C. 830.

Idiots and Insane Persons.

No person can be convicted of an offence who is labouring under either natural imbecility or disease of the mind, so as to render him incapable of appreciating the nature and quality of the offence, and of knowing that it was wrong: Code 19; nor a person otherwise sane, but having specific delusions, if the delusions caused him to believe in the existence of a state of things which, if it actually existed, would justify what he did: Code 19(2).

Everyone is presumed to be sane until the contrary is proved: Code 19(3).

Drunkenness.

Involuntary drunkenness is in the category of insanity, if it was of such a degree, that the accused was incapable, even for a time, of distinguishing right from wrong: 7 Can. Cr. Cas. 277; but voluntary drunkenness is no excuse: 1 Hale P.C. 32. Acts committed under delirium tremens, although the result of voluntary drunkenness, are not criminal: *Ib.*, *R. v. Davis*, 14 Cox C.C. 563.

Ignorance of the law is no excuse for crime: Code 22.

2. A Justice Has no Authority to Intervene

Or take any part in any case which has arisen within the territorial jurisdiction of a police magistrate, except upon the request, illness or absence of the latter; nor can he take any part in any case before a magistrate without the latter's request: R.S.O. ch. 87, secs. 7, 17, 22. But this does not apply to proceedings against a police magistrate himself: *R. v. Chipman*, 1 Can. Cr. Cas. 81. A justice may, however, sit in a town or place for which there is a police magistrate, when hearing a charge which has arisen outside such town or place: R.S.O. ch. 87, sec. 23;

R. v. Clark, 15 O.R. 49; *R. v. Lee*, 15 O.R. 353. A justice acting in the absence or illness of a police magistrate, at the latter's request, has only the jurisdiction of one justice; but if two justices act together for the magistrate, at his request or in his absence, they are invested with all the magistrate's authority: *R.S.O. ch. 87, sec. 29*.

3. A Justice Cannot Intervene,

Or take any part, in a case which is already in the hands of another justice, without the latter's consent.

The justice who issued the summons may hear the case, and convict, even if there should be several other justices present who decide to dismiss the case, unless they took part in the case or acted with the first justice's consent: *R. v. McRae*, 28 O.R. 569; *R. v. Stansbury*, 4 T.R. 456. But, at the request of the summoning justice, any others may sit with or for him; and in that event, the majority governs; and when the bench is equally divided there is no decision; but in such event, the case can be re-tried before any justice: *Kumis v. Graves*, 37 L.T. (Q.B.) 583. All of the justices adjudicating in a case must have heard the whole of the evidence, and if any of the evidence was taken in the absence of any of them a conviction or commitment by him, or a majority (made up by including him), will be invalid: *Re Nunn*, 2 Can. Cr. Cas. 429.

4. Disqualification of Justice by Interest.

A justice's authority in a case is ousted if he is a party to, or has any *pecuniary* interest whatever in it, direct or indirect, however small; or if he has any *substantial* interest, not pecuniary: *R. v. Farrant*, 20 Q.B.D. 58; *R. v. Fleming*, 27 O.R. 122. And he will be restrained by prohibition if he attempts to act in such a case: *Hutton v. Fowke*, 1 Rep. 648; and any proceedings taken by him in it may be quashed; and the Court will even punish him by attachment for so doing: *Hereford's case*, 2 Ld. Raymond 766.

By Relationship.

Near relationship, or business or other connection, between the justice and either of the parties, invalidates his authority in it; such as, one of the parties being a daughter of the justice: *R. v. Langford*, 15 O.R. 52; or his servant: *Gallant v. Young*, 11 C.L.T. 217; or niece of justice's wife: *State v. Wall* (Fla.), 19 C.L.T. 21; or when one of the parties was the justice's father: *R. v. Steele*, 26 O.R. 540; or if a civil suit was pending at the suit of the defendant's husband against the justice: *Ex p. Gallagher*, 33 C.L.J. 547; or if the justice belongs to a temperance alliance which is prosecuting: *Daigneault v. Emerson*, 5 Can. Cr. Cas. 534. A justice who is a member of a municipal council, which expressly directed the prosecution, is disqualified: *Tessier v. Denoyers*, 12 S.C. (Que.) 35; or who is a member of a local board of health, and who was present when a resolution was passed directing the prosecution: *R. v. Lee*, 9 Q.B.D. 394; in these cases it was held that where the statute which provided that the fact of the justice being such member, should not disqualify him, did not relieve him, in these particular cases, as he was present when the prosecution was directed, and for that reason, he was likely to be biased. The authorities on the subject are fully summarized in the case of *Leeson v. Medical Council, etc.*, L.R. 42 Ch. D. 384; see also Code 578.

Bias or Likelihood of Bias.

If a state of things exists, whether arising from relationship, interest or any other cause whatever, which would be *likely* to create a bias, even though it be an unconscious one, and even if there existed no actual bias in the justice in favour of either party, he is nevertheless disqualified; if the party affected was not aware of that state of things, and so did not object: *R. v. Steele*, 26 O.R. 540; *Wakefield v. West*, L.R. 1 Q.B. 84; or if, knowing it at the time, he objected. But if the party affected was aware of it and did not object until the justice had decided the case or expressed an opinion in it, he cannot afterwards object: *R. v. Clarke*, 20 O.R. 642; *R. v. Stone*, 23 O.R. 46.

If one disqualified justice sits with others who are not so, the whole bench is disqualified, even if the disqualified justice did not actually interfere; the Court is improperly constituted by reason of his presence with the others, and its proceedings are invalid; he must entirely withdraw: *R. v. Klemp*, 10 O.R. 143. It is no answer to the objection that there was a majority of the bench of several justices in favour of the decision, exclusive of the disqualified justice, or that he withdrew before the decision: *R. v. Hereford Justices*, 6 Q.B. 753.

5. Proceedings on Sunday.

Judicial proceedings on Sunday are prohibited by the English statute, 29 Car. II. ch. 7, sec. 6, which is still in force; and now by the Dominion Lord's Day Act of 1906; and such proceedings are void, even if both parties expressly consent: *Taylor v. Philips*, 3 East 155.

The prohibition is only as to *judicial*, and not to merely *ministerial* acts. Taking an information on a criminal charge is a merely ministerial act, and so may be done on Sunday. And issuing or executing a warrant to arrest on Sunday is expressly allowed by Code 661 (3). "Backing" a warrant of arrest from another county, is a ministerial act, and so may be done on Sunday: *Clarke v. Woods*, 2 Exch. 395.

Holidays other than Sundays are juridical days and judicial and all proceedings on them are valid: *Foster v. Tor. Ry. Co.*, 31 O.R. 1.

6. Expiry of Time Limited for Prosecutions.

Proceedings cannot be commenced in a criminal case after the time limited by law has elapsed. The following are the provisions of the law in that respect:—

The time within which prosecutions must be taken in respect of the various offences set out in section 1140 of the Criminal Code is stated in that section.

In cases of offences punishable by a justice on *summary con-*

viction under the Criminal Code or any Dominion law, the information must be laid within six months from the time the offence was committed, unless the particular section or statute relating to the particular offence provides some other limitation: Code 1142. The months are calendar months: R.S.C. ch. 1, sec. 34(16); R.S.O. ch. 1, sec. 8(15).

In Prosecutions under Ontario Laws.

Including municipal by-laws, etc., section 2 of the Ontario Summary Convictions Act, R.S.O. ch. 90, as amended by the Ontario Statutes of 1901, makes the provisions of section 1142 of the Criminal Code apply; and the time limited for beginning the prosecution is six calendar months: *R. v. McKinnon*, 5 Can. Cr. Cas. 301. In many cases, both under Dominion and Ontario laws, the statute relating to the particular offence limits the time within which prosecutions must be commenced; and in such cases, the time so limited prevails.

The time is computed from, but not including, the day on which the offence was committed; but if it was a continuing offence the time runs from the last day on which it was committed: *Knight v. Halliwell*, L.R. 9 Q.B. 412; *Ex p. Burnby* (1901), 2 K.B. 458.

The day next following that on which the offence was committed will be the first day counted; and the day on which the information was laid will also be counted as part of the time: *Radcliffe v. Bartholomew* (1892), 1 Q.B. 161.

If the time expires on any holiday, the information may be laid on the next following day which is not a holiday: R.S.C. ch. 1, sec. 7(27); R.S.O. ch. 1, sec. 8(17). The term "holiday" is defined by R.S.C. ch. 1, sec. 34(11), and the days there mentioned will be those applicable to cases under Dominion laws (Labour Day being also one); but in cases of offences against Ontario laws, by-laws, etc., the holidays are prescribed by R.S.O. ch. 1, sec. 8(16); and see also the Ontario Statute of 1903, ch. 7, sec. 2.

If the offence is an indictable one, and is not one of those mentioned in Code 1140, and the particular statute does not provide for it, there is no time limited for beginning the prosecution.

There can be no prosecution for an offence by which one person kills another, unless the death occurs within a year and a day of the cause of death: Code 254; *e.g.*, murder, manslaughter, etc.

Commencement of the Prosecution.

Laying the information is the commencement of the prosecution: *R. v. Kerr*, 26 C.P. 214; *Thorpe v. Priestnell*, (1897) 1 Q.B. 159; and is sufficient, even if the summons or warrant is issued after the time limited has expired: *R. v. Lennox*, 34 U.C.R. 28; *Ex p. Wallace*, 33 C.L.J. 506. But the prosecution must be followed up without unreasonable delay, unless it is unavoidable, as in the case the defendant cannot be found. Sometimes, however, the particular statute relating to the offence requires the defendant to be "apprehended," or "convicted," within a time stated; and if so, merely commencing the proceedings within the time will not suffice. In the absence of any special statutory provision applying to the case, and of the case not falling within any of the above provisions, there is no time limited for commencing prosecutions: 7 Enc. of the Laws of England, 471.

In the case of a common assault tried *summarily* under Code 291, before a justice, the time limited for the commencement of the prosecution is six months: Code 291, 1142; but it is provided by the same section that a common assault may be treated as an *indictable* offence; and if the justice for any reason deems it a fit case to be dealt with by a higher tribunal, instead of disposing of it by summary conviction, he will hold a preliminary enquiry and commit the defendant for trial; and in that event Code 1142, limiting the time for prosecution to six months, will not apply. and there is no limit to the time for beginning the prosecution.

7. A Previous Conviction or Acquittal,

After a trial by a competent tribunal, is a bar to other proceedings for the same offence: Code 730, 907; *Wemyss v. Hopkins*, L.R. 10 Q.B. 378; but if the previous charge was withdrawn before being heard, it is not a bar: *Reed v. Nutt*, 24 Q.B.D. 669.

In the case of a second charge based on the same facts, with additional ones which have subsequently arisen, and which make it a different offence, the former conviction is no bar. As, for instance, a conviction for assault is not a bar to a charge of manslaughter, the party assaulted having died after conviction for assault; the death making the offence a substantially different one: *R. v. Morris*, L.R. 1 C.C.R. 90. A collusive conviction or acquittal is no bar: *R. v. Gilliard*, 12 Q.B. 527. A conviction or acquittal, for the theft of one of several articles at the same time, is no bar to a charge of theft of any of the other articles: 2 Russell, 6th ed., 60.

8. Title to Land.

In a case in which the title to land comes in question, on the hearing of a criminal charge, the justice's jurisdiction over the charge is ousted; this is on the ground that such question must be tried by a judge and jury in the civil courts; whereas the justice, by convicting, would be settling a question of property conclusively, and without remedy, if his decision happened to be wrong: *R. v. Davidson*, 45 U.C.R. 91. It is not for the justice to say whether the question of title is well founded or not; if it is honestly raised, and really believed in by the defendant, and there is some colour or shew of reason for it, the justice must dismiss the case, without at all investigating the legal grounds for the claim of title: *Watkins v. Major*, L.R. 10 C.P. 662; *Scott v. Baring*, 18 Cox C.C. 128; *R. v. Davidson*, 45 U.C.R. 91. But if the justice finds it is a mere pretence, raised for the purpose of avoiding penalties; or if the facts lead to only one possible conclusion on the question, and that is against the defendant, and there is no contradictory evidence on it, then there is no *bonâ*

fade question of title raised, and the jurisdiction will not be ousted: *Re Moberly v. Collingwood*, 25 O.R. 625. The claim set up must be one which (if it were sustained by the facts) would be good in law; and not one that, could not exist in law: *Watkins v. Major*, *supra*. The question for the justice to decide is whether the defendant's liability is contingent upon a decision as to the title to land, upon which there is a real dispute; if so, he cannot try it, and has no jurisdiction over the case: *South Norfolk v. Warren*, 12 C.L.T. 512.

9. Claim of Right.

In a case in which the defendant raises a *bonâ fide* claim of right to do the act complained of and which forms the substance of the charge, the above observations also apply. A *bonâ fide* claim of right ousts the justice's jurisdiction, as the parties are entitled to have it tried in the civil courts.

But in some instances the legislature has qualified this restriction, by enacting in effect, that in order to oust the justice's jurisdiction in the particular case, there must be not only a *bonâ fide* claim of right, but also that the defendant must give evidence to satisfy the justice that he really has fair and reasonable grounds to suppose he had the right to do the act complained of. Thus, in cases under Code 539, 540; and under R.S.O. ch. 120, sec. 1, it is provided that if the accused acted under a fair and reasonable supposition of right, he c. not be convicted. In prosecutions under such provisions, mere honest belief or claim of right to do what is complained of, is not sufficient to protect the accused; he must shew that there really were fair and reasonable grounds for such belief. It is for the justice, in such cases, not to try the question of right, but merely to enquire whether there were *reasonable grounds* for claiming the right; and if there were not, his jurisdiction over the charge is not ousted: *White v. Feast*, L.R. 7 Q.B. 353.

The defendant in such case, must give evidence of facts upon which he could reasonably found a belief that he had the right

to do the act in question: *R. v. Malcolm*, 2 O.R. 511; *R. v. Davy*, 27 A.R. 508, 4 Can. Cr. Cas. 28; *R. v. Mussett*, 26 L.T. 429.

So, in assault cases, Code 709 provides that the justice is not to try the case if any *bonâ fide* question as to the title to land, or bankruptcy, or the execution of any process of any Court arises. In this section of the Code there is no provision requiring proof of reasonable grounds for the defendant's belief in his claim of title; the requirement is, merely that there must be a real question as to title, and that it is honestly raised; if so, the jurisdiction is ousted; no assault case, however clearly established, can be summarily tried by a justice if a question of the title to land is raised in it: *R. v. Pearson*, L.R. 5 Q.B. 237.

The expression "colour of right" means "an honest belief in a state of facts which, if it existed, would be a legal justification or excuse"; because that takes away from the act its criminal character; but to do an act in ignorance that it is prohibited by law, is not to do it with colour of right: *R. v. Johnston*, 8 Can. Cr. Cas. 123.

10. The consent of the Governor-General or Attorney-General is required before prosecutions for certain offences: Code 591, 598.

CHAPTER IV.

PROCEDURE BEFORE THE JUSTICE.

The King, as the representative of law and order in the community, is named as the prosecutor in all proceedings for infractions of the criminal law; and by virtue of the authority vested in them by the Royal Commission, and the statutes to which reference has been made in the foregoing pages, justices of the peace are to deal with all charges of such infractions laid before them, in the manner which will be now described. Such charges are of two classes, viz.:—

1. Indictable Offences.

Those which are designated in the particular statutes relating to them, as “indictable” offences; or for which it is stated that the offender may be “prosecuted by indictment.” In such cases it is the duty of the justice to hold a “preliminary enquiry,” with a view of ascertaining whether there is a proper case to be sent for indictment and trial by a higher Court.

An alphabetical list of many indictable offences, is given at the end of the present chapter; and the procedure in such enquiry will be considered in this present chapter.

2. Summary Convictions Cases.

Those in which one or more justices, as the particular statute requires, have authority to convict and punish the offender: Code 706. See *post* at the end of chapter V. for an alphabetical list of such offences; and the procedure is given in chapter V.

A justice has no authority to convict and punish a person for an indictable offence, and can only hold a preliminary enquiry with the view of a commitment for trial.

Blank forms of the proceedings in all criminal cases, are sup-

plied to the justice, on application, by the clerk of the peace of the county: R.S.O. ch. 96, sec. 8.

In all cases of serious indictable offences, the justice should at once communicate with the Crown Attorney and act under his advice; and in all matters, the justice is entitled to the advice and assistance of the Crown Attorney, on application to him: R.S.O. ch. 96, sec. 6.

I. Preliminary Enquiries in Indictable Offences.

The proceedings are prescribed by sections 653, *et seq.*, of the Criminal Code of Canada.

Information.

The first step to be taken by the justice is to receive a written information.

Who May Lay an Information.

Any one who, upon reasonable or probable grounds, believes that any person has committed an indictable offence, may lay an information, in writing and under oath, before a justice of the peace having territorial jurisdiction (as described in foregoing pages) in respect to such offence: Code 654; R. v. St. Louis, 1 Can. Cr. Cas. 141.

Form and Essentials of Information.

The information may be in the Form 3 in the schedule to the Criminal Code, or to the like effect: Code 654(2). The information must, as required by this section, be in writing (which includes signature by the complainant and justice), and must be sworn to: Code 654; or it may be affirmed if the complainant, on the ground of conscientious scruples, objects to taking an oath: Can. Ev. Act, R.S.C. ch. 145.

The form of oath is: "You swear that this information is true, so help you God."

If an affirmation is administered instead of an oath, the form prescribed by the Evidence Act is as follows:—

"I, A.B. (name) do solemnly affirm" that this information is true.

An information for an indictable offence, must be sworn or affirmed, before a summons or warrant of arrest can legally be issued by the justice, who would be liable to an action for damages, if he issues a warrant and the defendant is arrested without a valid information: *Friel v. Ferguson*, 15 U.C.C.P. 584; *McGuinness v. Dafoe*, 27 O.R. 117, 23 A.R. 704.

The essentials of a valid information are: a statement of the date when the information was laid; the place where laid; the name or names of the justice or justices before whom it is laid; a description of the charge or offence, with date and place when and where committed; signature of the complainant; the jurat, or statement of its being sworn or affirmed; and the signature of the justice to the latter. The nature and essential particulars of the offence should be set out carefully in the information and process; but Code 723(3) provides that it is sufficient if the offence is stated in the words of the statute relating to it: *R. v. France*, 1 Can. Cr. Cas. 321. Only one offence is to be laid in one information.

In the alphabetical synopsis of offences at the end of this chapter, forms of the various charges are given, which may be used in the information and other proceedings. Sufficient particulars ought always to be given to inform the defendant as to the charge against him.

Against Whom Information May be Laid.

Any number of accused persons who have been jointly concerned in committing an offence, whether as principal or as accessories after the offence was committed, or as abettors in it, may be joined in one information: Code 69; but separate informations may be laid against each offender: *Paley on Convictions*.

Corporations

Cannot be made subjects of a preliminary enquiry before a justice: *R. v. T. Eaton Co.*, 2 Can. Cr. Cas. 252.

Justices Must Receive Informations.

A justice cannot refuse to receive an information from any person who offers to make oath or affirmation to the commission of an indictable offence against the law, over which the justice has territorial jurisdiction. It is a breach of the justice's oath of office for him to so refuse; and if he does, he is liable to be compelled by a mandamus from the High Court of Justice: *R. v. Richards*, 20 L.J.Q.B. 352; *Re Monmouth*, L.R. 5 Q.B. 251.

Search Warrants.

When an information has been taken, the next matter for consideration may be, whether a search warrant should be issued. The common law right of search, which only applied to stolen goods, has been greatly extended by section 629 of the Criminal Code; and it is expedient in many classes of cases, to have search warrants issued. This may be done either to recover stolen property; or to secure the implements which have been used in the commission of crime; or to obtain possession of anything which has been the subject of an offence, or which may afford evidence to bring it home to the guilty party: Code 629.

The sections of the Criminal Code relating to search warrants are 629 to 643; and the form of information is Form I. to the Criminal Code. The form of search warrant is No. 2. Forms of material to be filled in these forms are given in the synopsis of indictable offences, *post*, under "Search Warrants."

The particular place where the search is to be made must be definitely stated and described in the information and search warrant. Enclosed grounds constitute a "place" within the words of the statute, no matter how extensive they may be, and even if not roofed in: *Eastwood v. Miller*, L.R. 9 Q.B. 440; *R. v. McGarry*, 24 O.R. 52; and it must be stated that a criminal

offence has been committed and what it is, and that the things to be searched for relate thereto as above mentioned, and that there are reasonable grounds (stating what) for believing the things are in the place stated.

Searching in Another County.

A search warrant cannot be issued authorizing a search in another county; but a warrant may be issued there by a justice for such county where articles liable to be searched for are reasonably suspected to be. Goods seized under search warrant cannot be taken out of the county where they are seized: *Hoover v. Craig*, 12 A.R. 72; but are to be taken to the justice who issued the warrant under which they are seized, and he is to deal with them in the way described in Code 631.

Considering the Information.

Upon receiving an information charging an indictable offence, the next duty of a justice is "to hear and consider the allegations of the complainant"; and to question him, and any of the witnesses, touching the facts and reasons for suspecting and believing the defendant to have committed the offence complained of. If upon these facts the justice is of opinion that a case is made out for so doing, he may issue either a summons or a warrant of arrest, against the party charged: Code 655. But the mere bald statement in an information, even under oath, by any person, that he believes a criminal offence to have been committed by the accused, without any facts or reasons being given to the justice to warrant such belief, and to satisfy him that such facts are sufficient, does not authorize him in issuing process: *Ex p. Boyce*, 24 N.B.R. 13. A justice who issues a warrant of arrest even upon a sworn information, without enquiring at all into the grounds which the complainant has for making the charge, and whether these are sufficient, so that he may be able to exercise a wise discretion in the matter, thereby sets at naught the requirements of Code 655, which authorizes him to issue the process, only "if on hearing allegations of the complainant he is

of opinion that a case for so doing is made out," and the justice who so recklessly issues process by which a man's liberty is taken away, may be liable to an action for damages for so doing, if it turns out that the proceedings were not based upon any reasonable or probable grounds whatever: *Murfin v. Sauve*, 6 Can. Cr. Cas. 275. But if the justice really enquires into the grounds, and hears the facts, and exercises his discretion, and then issues the process, it is a judicial act: *R. v. Ettinger*, 3 Can. Cr. Cas. 387; and no officer, exercising a judicial act, is responsible for any error of judgment, no matter how erroneous it may be.

Before issuing process a justice should particularly enquire into all the matters referred to in Chapter III., *ante*.

Sunday.

An information, being a ministerial act, may be taken on Sunday: See *ante* p. 14. And a warrant to arrest may be issued on Sunday: Code 661(3), but a summons cannot be issued on Sunday, it not being a ministerial, but judicial, act and not allowed by Code 661(3).

Whether Summons or Warrant to be Issued.

The question whether a warrant to arrest the offender should be issued in the first instance, or whether a summons will suffice, is a matter for the justice's discretion. He will be guided by the nature of the offence, the general character of the defendant, and whether he is a known resident; keeping in view the consideration that the only object is to secure the presence of the accused to answer the charge. Unless the charge is a serious one, a warrant must not be issued if a summons will suffice: *O'Brien v. Brabner*, 78 Eng. L.T. 409. But upon a serious charge, a warrant should always be issued no matter who the accused may be. The summons or warrant must be issued by the justice who took the information; no other has authority to do so.

The Issuing of the Warrant of Arrest,

Its form, what it is to contain, etc., are set forth in Code 659, 660. The form is given at the end of the Criminal Code—Form

6. All blanks, including the name or description of the defendant, must be filled in, before the justice issues it. "No warrant shall be issued in blank" is the salutary provision of the law in Code 659(2), preventing the possibility of the recurrence of the gross abuses which at one time prevailed by means of blank

WRITABLE

The warrant must be under the hand and seal of the justice; and may be directed to one (by name), or to all, of the constables of the county, without naming any of them: Code 660.

If the name of the offender is unknown the warrant must so state, and a description of him must be given in it instead of the name.

The warrant never runs out, but is in force for any length of time until executed; and it need not be returnable at any particular time: Code 660(3).

Summons Instead of Warrant.

If a summons is issued, its form and contents are provided by Code 658. The form is given in the schedule of forms in the Criminal Code—Form 5. The time and place where the accused is to appear must be mentioned; and the place should be a convenient one, reasonably near to where the defendant resides or is at the time. He ought not in any case to be unnecessarily brought, either by summons or warrant, a long distance from home; and it would be an abuse of the justice's authority to cause such to be done. A defendant may be unjustly inconvenienced, or even prevented from getting bail when far from his friends. But the jurisdiction of the justice extends to all parts of the county, and prohibition will not lie against his proceedings on this ground: *R. v. Chapman*, 1 Can. Cr. Cas. 81.

The summons must give a reasonable time for the defendant to appear: *Re Smith*, L.R. 10 Q.B. 604; *R. v. Langford*, 15 O.R. at p. 53, in which it was held that a summons requiring the defendant to appear immediately, or on the same day, is irregular. Service on the same day on which the defendant was to appear,

or late on the previous evening, is not sufficient, and is an excess of jurisdiction: *Ex p. Cowan*, 9 Can. Cr. Cas. 457.

Service of Summons.

It must be served by a constable or other peace officer: Code 658(4). Who are peace officers is described in Code 2(26). The summons is to be served: —

1. Personally upon the person to whom it is addressed, by delivering a duplicate, or copy: *R. v. Chandler*, 14 East. 267; Code 658(4).

2. Or "if he cannot conveniently be met with," it may be left for him at his last or most usual place of abode, with some inmate apparently not under 16 years old: Code 658(4).

It is not necessary to give positive proof that the person with whom it was left was actually an inmate; it is sufficient if the person was apparently an inmate (*e.g.*, a domestic servant there): *R. v. Chandler*, 14 East. 267. But it must be proved that some reasonable effort was made to serve the accused personally; and when the summons was served upon an adult at the defendant's residence, but there was no proof whatever that such person was really an inmate, or that any effort had been made to serve the defendant personally, it was held to be insufficient: *Re Barron*, 4 Can. Cr. Cas. 465; *R. v. Carrigan*, 17 C.L.T. 224.

The constable must state to the person served for the accused, what the nature of the summons is, and who it is for: *Ex p. Smith*, 39 J.P. 614.

Procedure on Default of Appearance on Summons.

If the accused, after due service, does not attend, or if the constable cannot serve the summons in any of the ways mentioned above, the constable will at the time and place appointed for the hearing be sworn as a witness and his evidence will be taken in writing and signed by him and the justice in the way evidence is usually taken (*see post*), shewing that the summons was duly served; or that it cannot be served, stating what efforts the con-

stable has made, and why he cannot effect service; or an affidavit of the constable may be drawn up and sworn to to the same effect: Code 658(5).

An affidavit that the constable served the accused by delivering to and leaving the same with the wife of the accused for him (naming the accused) at his most usual place of abode, naming it and shewing the efforts to effect personal service, was held to be sufficient service and proof: *R. v. McAuley*, 14 O.R. 643.

Warrant of Arrest on Default.

Upon due proof of service of the summons, and the accused not appearing, or if the affidavit or evidence of the constable shews that the summons cannot be served, the justice is to issue a warrant to arrest the accused: Code 660(5)—Form 7.

In case of necessity, (as where it appears that after a summons has been issued or served, the accused is about to abscond, or that there is reasonable ground to apprehend that he may do so), a warrant of arrest, as in the first instance, may be issued, either before or after the time mentioned in the summons for his appearance: Code 660(4). Form 6. above mentioned.

The justice cannot proceed with a preliminary enquiry in the case of an indictable offence in the absence of the accused, even if he has been served with a summons, or even if a solicitor appears for him and offers to waive the defendant's personal attendance; he must be brought personally before the justice, and must be personally present at all the proceedings.

Execution of Warrants.

A warrant of arrest may be executed in the same county; or in an adjoining county or territory within seven miles of the boundary, without being "backed" or endorsed in the latter county, in the case of "fresh pursuit": Code 666(1). "Fresh pursuit" means that if the constable is pursuing the accused and the latter, during such pursuit, escapes beyond the boundary, the constable may follow him and arrest him within seven miles

of the boundary. The seven miles are computed in a straight line from the boundary: *McMullen v. Cole*, L.R. 8 Exch. 32.

A warrant can only be executed by the constable, or one of a class of constables, to whom it is directed: Code 661(2); as, for instance, where it is directed to any or all of the constables of the county of Huron, it must be executed by one of them: *Symonds v. Curtz*, 16 Cox 726. A constable is entitled without any other warrant to place his prisoner in any lock up or gaol until he can take him before a justice: *McKellar v. McFarland*, 1 U.C.C.P. 457.

Arrest on Sunday.

The warrant may be issued and executed on Sunday, or other holiday: Code 661(3); and by night or day: 4 Russell 110.

Breaking Open Doors.

The constable may break open an outer or inner door, or both, of any place where the accused is suspected to be, for the purpose of making the arrest. But before breaking open by force, he must make a reasonable demand of admittance and explain who he is, and his business there. An outer door should only be broken open in a case of necessity, when an immediate arrest is requisite: 1 Burns' Justice 275; and when there are reasonable grounds to believe that the defendant is secreted in the premises.

What Amounts to Arrest.

Mere words do not constitute an arrest; the constable must place his hand on the person to be arrested, or otherwise restrain his liberty: 1 Burns' Jus. 275. But this may be waived; and if the accused examines the warrant and agrees to go with the constable; or if he so agrees on being told by the constable that he has a warrant for his arrest, it is complete.

It is the constable's duty to have the warrant with him and produce it if required: Code 40. And when practicable he should

give notice of the cause of arrest: Code 40(2); and should serve the accused with a copy of the warrant, which the justice is required to furnish for that purpose: Code 711.

The omission of these details will not invalidate the arrest, however: *Ex p. Lutz*, 27 N.S.R. 491; but may become a factor in considering the question of the amount of force which was necessary and proper to be used in effecting the arrest, if resisted: Code 40(3).

"Backing" or Indorsing Warrants.

If the accused cannot be found in the county in which the warrant was issued, the constable may take it before a justice in any other county or district in Canada, where the accused is suspected to be, and have it indorsed as follows: Code 662. The constable is to be sworn by the latter justice in the usual way, and his evidence taken shewing that he was present and saw the warrant signed by the justice who issued it. Upon receiving such evidence an indorsement is to be made upon the warrant or annexed to it in Form 8 to the Criminal Code. The warrant so "backed" may then be executed by the constable who brought it, or by any other constable, either of the county where the summons was issued, or of that where it was so "backed": Code 662(2). The same process may be repeated in other counties in any part of Canada where the accused is supposed to be: Code 662. An arrest made in another county than that in which it was issued, before being "backed," is unlawful, even if the warrant is afterwards duly "backed": *Southwich v. Hare*, 24 O.R. 528; and the accused may lawfully resist an arrest under an unbacked warrant: *R. v. Crumpton* (1880), 5 Q.B.D. 341, cited in *R. v. Whitesides*, 8 O.L.R. 625.

Constable's Duty on Making Arrest.

Upon effecting an arrest under a warrant, either in the county of the justice who issued it, or elsewhere, it is the duty of the constable, as soon as practicable, to bring the accused before the

justice who issued the warrant, or some other justice of the same county: Code 662(2); whether in the province where the arrest took place, or "in any part of Canada": Code 662; *R. v. Gillespie*, 1 Can. Cr. Cas. 551.

But if the prosecutor or some of his witnesses are in the county where the arrest took place, and if the justice who backed the warrant directs that the accused be brought before himself, or some other justice for the same county, and if the arrest and the offence both took place in the same province (but not otherwise) the justice is authorized to make such direction, and it will be the duty of the constable to comply with it; and the justice who backed the warrant, or any other justice for the same county, may then proceed with the case, as if the warrant had originally been issued by himself: Code 663.

Proceedings on Appearance of Accused.

Note that the summons or warrant can only be issued by the justice who took the information; but by his direction or consent (not otherwise) all further proceedings subsequent to issuing the process, may be taken by any other justice having territorial jurisdiction.

When the accused appears, whether voluntarily or upon summons or under arrest, or while in custody for the same or any other offence, the justice is authorized to proceed to enquire into any matter charged against him: Code 668. He must state to the accused what the charge is and proceed with the enquiry; or he may postpone it to another time if sufficient reasons are given.

Objections to Information or Warrant of Arrest.

When the accused appears before the justice, any objections to the validity of the information or warrant, cease to be of any importance whatever. The information being required merely to guide and give authority to the justice in issuing the warrant or summons, and the warrant being merely the means of pro-

curing the defendant's appearance, they have no bearing on the case when these objects have been obtained. Any irregularity or defect in substance or in form, in the information, summons or warrant, or any variance between the latter and the charge stated in the information, or between them and the evidence adduced, or even the entire absence of any information or process, or if the defendant has been illegally arrested without a warrant, none of these things have then any effect on the proceedings before the justice, who is to proceed (without any necessity to amend any information) to hear any charge whatever for an indictable offence within the justice's jurisdiction, which may then be brought against the accused, whether it be the charge mentioned in the information or any other charge based even on wholly different facts: Code 668, 669; *R. v. Hughes*, 4 Q.B.D. 614; *Re Maltby*, 7 Q.B.D. 18; *Grey v. Commissioners of Customs*, 48 J.P. 343; *R. v. Brown* (1895), 1 Q.B. 119; *R. v. Clarke*, 20 O.R. 642; *R. v. Stone*, 23 O.R. 46.

But if the charge taken up differs from that laid in the information the accused must be distinctly informed of its nature, and it ought to be formulated in writing for that purpose; and if the accused desires further time to prepare to meet it, such time must be granted, and the fullest opportunity must be allowed him to do so, the accused being remanded to gaol or bailed, according to the nature of the case: Code 670; *Re Daisey Hopkins*, 56 J.P. 263; *R. v. Vrooman*, 3 Man. R. 509, referred to in 2 Can. Cr. Cas. page 93; *R. v. Bowman*, 2 Can. Cr. Cas. 93; *R. v. Doherty*, 3 Can. Cr. Cas. 505.

It is to be carefully noted, however, that there are some special cases which are exceptions to this general rule; and that it is necessary to refer to the particular clause or statute relating to the offence, to see whether there is any special provision in this regard. If such clause or statute requires, either expressly or by necessary implication, that an information or process is a condition precedent to the justice's jurisdiction, it must be done. For instance, in a case in which a particular statute, relating to a cer-

tain offence, provided that a summons against the party charged must be served within a certain period after the offence was alleged to have been committed, it was held that the service was a condition precedent to jurisdiction in the case: *Dixon v. Wells*, 25 Q.B.D. 249.

Particulars of the Facts on Which the Charge is Founded,

May be ordered to be furnished to the accused, in any case: *R. v. Doherty*, 3 Can. Cr. Cas. 505. The principle on which the justice should act in ordering particulars is "to give such information as is sufficient to enable the defendant fairly to defend himself; but on the other hand, not to fetter or embarrass the prosecutor in the conduct of his case," or to prematurely disclose the prosecutor's hand and so enable the accused to make an attempt to make away with evidence which he may have the means of controlling: *R. v. Hamilton*, 7 C. & P. 448; *R. v. Stapylton*, 8 Cox C.C. 69; *R. v. Rycroft*, 6 Cox C.C. 76. If it should appear that giving particulars would in any way unfairly prejudice the prosecution and endanger the elucidation of the truth, particulars should be denied; and instead of giving particulars further time may afterwards be given the defendant to meet the facts disclosed in the evidence when it has been adduced by the prosecution. On an application by defendant for particulars he should furnish an affidavit denying knowledge of the accusation: *R. v. Stapylton*, above quoted.

FORM OF AFFIDAVIT FOR PARTICULARS.

Canada.

Province of Ontario.

County of .

} The King v. C.D.

I, C.D., of the of , in the county of
(*occupation*) make oath and say:—

1. That I am the above named defendant.
2. That I am not aware what are the nature and particulars of the alleged offence charged against me herein, or any of

3—SEAGER.

them, and do not possess sufficient information regarding the charge to enable me to meet the same.

3. That I am advised and believe that it is necessary to enable me to defend myself against the charge brought against me, and to a fair hearing thereof, that further particulars should be furnished me by the prosecutor, in regard to the said charge.

Sworn before me at the	}	(Signed) C.D.
of in the county of		
this day of , A.D. 190 .		

J.P. (or a commissioner, etc.).

Adjournments and Remands.

The justice may, at any stage of the hearing, adjourn it from time to time, as the interests of justice may require: Code 679(c). An ordinary remand is made by a warrant remanding the accused to gaol or lockup, according to Form 17 in the Criminal Code. Or bail may be taken in a bailable case, with or without sureties according to the nature of the matter: Form 18. The following cases are not bailable by justices, viz., offences punishable with death, and treason and all treasonable offences. In all other cases the justice may on adjourning the case take bail as above mentioned. In a case for a trifling offence, and if the defendant is a known resident of the locality, he may be allowed to go at large pending the adjournment, upon his own recognizance to appear according to the above Form 18. If bail is taken it should be sufficient to ensure the defendant's appearance, but must not be excessive. To impose excessive bail is practically to refuse bail. If bail is taken the proposed surety or sureties may be examined on oath as to their property and sufficiency, their evidence being taken down and signed in the same way as other evidence in the case and as to which see subsequent pages.

Respectable householders (not necessarily freeholders) may be accepted as bail, if they possess sufficient property of any kind in the province: Petersdorf on Bail, 506. If a person be-

coming bail for another should take security from the latter, he will not be accepted as sufficient bail, no matter what property he is possessed of: *Con. Ex. & F. Co. v. Musgrove* (1900), 1 Ch. 37. Money may be deposited by the accused in place of sureties if the justice sees fit to accept it: *Moyser v. Grey*, *Cro. Car.* 446.

The justice should in a large measure be guided by the Crown Attorney in the matter of bail, as he is in a position to have fuller knowledge of the facts of the case.

The remand must not be for more than "eight clear days" at one time, the day following that of the remand being the first day counted: *Code 679(c)*.

The term "clear days" means that the time is to be reckoned exclusively of the day on which the remand is made and of the day on which the case is to be again taken up: *R. v. Aberdare*, 14 Q.B. 854; *Sams v. Toronto*, 9 U.C.R. 181. If a Sunday intervenes it will be counted as one of the eight days: *Re Railway Supply Co.*, 29 Ch. Div. 204. A remand on the first day of the month, for eight clear days, would mean until the tenth day of the month.

Any number of such remands may be made (from time to time) if the interests of justice so require: *Code 679(c)*; but good grounds should be shewn for them: *Connors v. Darling*, 23 U.C.R. 547.

Short remands, not exceeding three clear days at one time, may be verbally made remanding the accused into the charge of the constable, who then becomes responsible for him, and may place him in a lock-up house, if there is a fit one in the locality: *Code 679(2)*. A remand for more than three days must be by warrant; and the accused must be personally present when it is made: *Re Sarrault*, 9 Can. Cr. Cas. 448.

Applications by the Crown Attorney, or person representing the Attorney-General, for remands, should generally be granted upon his stating sufficient reasons for them. But some evidence should be taken in the case within a reasonable time, justifying the prosecution.

The defendant cannot be lawfully remanded in his absence; he is entitled to be present personally throughout; and if a remand is made in his absence; or if a remand is made for longer than 8 clear days at one time, the High Court will order his discharge on *habeas corpus* as being illegally detained: *Re Sarault*, 9 Can. Cr. Cas. 448.

If it is found expedient, *e.g.*, if a witness is going away and will be absent at the time fixed, or for any other reason, the case ought to proceed earlier; the accused, after being remanded until a day stated, may be brought before the justice and the hearing proceeded with on an earlier day; and the gaoler must produce the prisoner on the justice's order: Code 680.

FORM OF ORDER.

To the Keeper of the common gaol at county of .

You are hereby required to have C.D. now in your custody at in the of on the day of A.D. 190 , at o'clock noon, before me to answer to the charge of , upon which he was heretofore remanded by me to your custody, to be dealt with according to law.

Dated, etc.

J.P., County of .

Failure of Accused to Attend an Adjourned Hearing When Out on Bail.

In that event a new warrant of arrest must be issued: Form 6 to the Criminal Code; and it may be executed in the same manner as the warrant issued in the first instance. And by Code 1097, the justice is to endorse on the back of the recognizance above mentioned the certificate, Form 73 to the Cr. Code, and transmit it to the clerk of the peace for the county in order that it may be estreated at the next General Session of the Peace: Code 1097, 1098. The case will then be adjourned until the ac-

cused can be again arrested and brought before the justice, when proceedings will be continued as follows.

Proceedings to Procure Attendance of Witnesses.

Summons to Witness.

Upon the application of either party, the justice "may" issue a summons for any material witnesses residing anywhere within the province: Code 671; Form 11 to the Code. The word "may" in this section implies a duty, and it is therefore a matter for the exercise of a judicial discretion on good reasons, and the summons cannot be refused arbitrarily.

Production of Documents.

The summons may contain a direction to the witness to produce any documents in his possession; or under his control or in his power even if not in his actual possession: Code 671; and the following form of words may be inserted in the summons: "And that you bring with you and produce at the said time and place all books, papers, writings and documents in your possession or power relating to the said matter, and particularly" (here mention any specific book or paper it is desired to have produced).

Serving Witnesses.

The summons must be served by a constable or peace officer: Code 672. It may be served: (1) Personally; (2) Or if the witness cannot conveniently be met with, it may be left "for him" at his last or most usual place of abode, with an inmate apparently not under sixteen years of age: Code 672. In the latter event, the constable should explain the nature of the summons, and who it is for: *R. v. Smith*, L.R. 10 Q.B. 609.

The "most usual place of abode" means his present place of abode; and the words "last place of abode" mean the last place of abode he had so far as known: *Ex p. Rice Jones*, 1 L.M. & P. 357.

Some reasonable effort should be made to serve the witness personally; and before any warrant to arrest a witness for non-attendance is issued, it should appear that the summons has come to his knowledge: *Gordon v. Denison*, 22 A.R. 315.

Warrant to Arrest Witness.

Code 673. If the witness does not attend, "*and no just excuse is offered*," the justice is to swear the constable as a witness, and take his evidence proving the service of the summons. The constable's evidence should shew that the summons was served personally, or if not, what efforts the constable made to find the witness, that he could not find him and that an inmate (of at least sixteen years of age) was served at the witness's residence, and also any other facts and circumstances going to shew that the witness is keeping out of the way to avoid service; or that the summons has come to his knowledge. Evidence must also be taken shewing that there is reason to believe that the witness is likely to give material evidence. It should appear in the evidence that the summons was served a reasonable time before the witness is required to appear: *Ex p. Hopwood*, 15 Q.B. 121.

The justice may then issue his warrant: Form 12 in the Criminal Code; for the arrest of the witness, who is to be forthwith brought before the justice, to give evidence, and the case in the meantime may be adjourned: Code 673. Great care should be used before issuing a warrant to arrest a witness and the reason for his non-attendance should be first enquired into.

The warrant to arrest a witness must be "backed" as described for other warrants, see *ante* p. 30, if the witness is to be arrested in another county; and it may be executed in any part of the province where it is "backed": Code 673(3).

Witnesses' Travelling Expenses.

There is no provision in the law for payment of the witnesses' travelling expenses; and all witnesses are bound to attend on preliminary enquiry in criminal cases before the justice, without

being paid their expenses: *R. v. James*, 1 C. & P. 322, the Ontario statute relating to payment of witnesses in criminal cases only applying to witnesses before the Court and not before the justice. But as a warrant is not to be issued unless "no just excuse is offered" for non-attendance of a witness, it would appear that if the witness would have to come from a distance and is a person in circumstances in which he would be unable to pay his own expenses, that would constitute a "just excuse," and a warrant should not be issued against him: *Roseoe Cr. Ev.* 11th ed. 104. In important cases the Attorney-General may direct a payment of witness fees before the justice. In such case application may be made through the Crown Attorney.

Procuring Attendance of Witness Who is in Canada, But Not in the Province.

A justice's summons will be of no effect in such a case; and a subpoena from a Superior Court, or a County Court, must be issued upon an order of a judge, on the application of either party, supported by an affidavit: Code 676.

Such subpoena must be served on the witness personally, and an affidavit, sworn before any justice of the peace, is sufficient proof of service: Code 676(2).

If such witness does not attend on the above mentioned subpoena, "*and no just excuse is offered*," the justice who is hearing the case may on filing the above mentioned affidavit of service, or upon other proof on oath of the service, issue his warrant for the arrest of the witness: Form 15 to the Criminal Code; Code 677. This warrant is to be directed to the constables in the county or place where the witness is: Code 677; and it may be executed there without being "backed"; but if necessary may be executed in any other county, but must then be "backed" in the manner directed by Code 662: Code 677(2), see *ante* p. 30, as to method of such "backing."

Execution of Warrant to Arrest Witness.

The warrant when issued may be executed by a constable, anywhere in the county to which it was issued; or if the witness is not in the county, he may execute it in any county in the province, upon getting the warrant "backed" in the same manner as a warrant for the arrest of a person accused for crime under Code 662, 673(3). It cannot be executed out of the province: See *post* "witness out of the province."

Treatment of Witness When Arrested.

The constable is at once to take a witness when arrested before the justice who is holding the enquiry and he may order his detention by the constable, or in the common gaol or in a police cell or lockup; or the justice may order his release on his own recognizance, or with sureties, in order to secure his presence at the time and place fixed for the hearing: Code 674: Form 18.

The witness must not be searched, nor placed by the constable in the gaol or police cells without the justice's order. The witness is not to be treated as a criminal; and the justice should not allow any unnecessary harshness or interference with the witness's rights or liberties; the one thing to be kept in view being to secure his attendance to give evidence: *Gordon v. Denison*, 22 A.R. 315.

The warrant may be issued to arrest a witness either for the prosecution or the accused: Code 671, 673.

Warrant Against a Witness in the First Instance.

Provision is made by Code 675 for the arrest of a witness in the first instance, if it appears upon evidence being taken before the justice upon oath, and in writing, that such witness is within the province, and that, upon the facts and circumstances shewn to the satisfaction of the justice, the witness is likely to give material evidence either for the prosecution or the accused, and will not attend without being compelled to do so by a warrant.

This extreme course should never be resorted to, unless from

the facts and circumstances, it clearly appears to be necessary. But, if it appears from the character of the witness, and his not having any permanent residence, or other sufficient reason, that the ends of justice would be otherwise defeated, and particularly if some serious crime has been committed, this necessary means of preventing the loss of important testimony must be taken.

Form of the warrant, 14 in the Criminal Code.

Under the authority of this warrant, or of a warrant issued under Code 677, the witness may be brought from any part of Canada.

Commission to Examine Witnesses Out of Canada.

The evidence of a witness on either side, who resides out of Canada, may be taken under commission, which is to be issued under an order of a judge of the High Court or County Court: Code 997. Such commission may be issued while the preliminary enquiry is pending; and the evidence taken under it may be used before the justice at the preliminary enquiry: *The Queen v. Verral*, 6 Can. Cr. Cas. 325; and a commission may be issued for the examination of a resident out of Canada, even though he is temporarily within the jurisdiction, but about to return to his own country: *R. v. Baskett*, 6 Can. Cr. Cas. 61.

Witness Who is in Prison.

A justice holding a preliminary enquiry has no authority to compel the attendance of such witness before him, to give evidence. The witness can only be brought before the justice under a writ of habeas corpus *ad testificandum*: *R. v. Townsend*, 3 C.L.J. 184; *Spellman v. Spellman*, 10 C.L.T. 20.

If a Witness is Dangerously Ill,

His evidence may be obtained under commission issued from a Superior or County Court: Code 995. The evidence of such a witness must be taken in the presence of the accused, who must, if in actual custody, be taken before the commissioner for that

purpose, by the officer having the prisoner in custody; and the expense of so doing is paid out of the county funds, for prison maintenance: Code 996.

A notice of the time and place for taking evidence for the prosecution under a commission must be served on the defendant, a reasonable time before the evidence is taken: Code 996.

This notice must be in writing; and if a written notice is not served upon the accused, the evidence cannot be used against him, even if he, being in custody, was taken to the place where the evidence was given, and was present throughout: *R. v. Quigley*, 18 L.T. 211; *R. v. Shurmer*, 17 Q.B.D. 323.

Proceedings on the Hearing Before the Justice.

When the parties and their witnesses are before the justice, the hearing and subsequent proceedings are regulated by section 678 and subsequent sections of the Criminal Code. Anyone present before the justice may be called and compelled to give evidence, although not subpoenaed: Code 678. It is not necessary that the accused should plead; and the justice will proceed to take the evidence.

Who to Conduct the Hearing.

Either the justice who took the information, and issued the process, or any other justice for the same territorial jurisdiction, is competent to proceed with the hearing of the case: Code 664. But, as has been mentioned at page 12, another justice cannot intervene without the consent of the justice who took the information and issued the summons or warrant. One justice has authority to conduct a preliminary enquiry: Code 665; but with the consent of the justice having the case before him, any number of justices may join with him in hearing it, or act in his place: Code 665. But in that case, all the justices who join in the commitment, must hear the whole of the evidence taken in the case, and merely hearing the evidence read will not suffice: *Re Nunn*, 2 Can. Cr. Cas. 429; *Re Guerin*, 16 Cox C.C. 596. If

the case is heard before two justices, and they disagree, there can be no commitment; there must be a majority in favour of it. If the justices are equally divided, the case may be re-heard, or a fresh information may be laid before another justice. A discharge on a preliminary enquiry does not prevent the accused from being brought up before another justice, upon a fresh information for the same offence: *R. v. Morton*, 19 C.P. 26; *R. v. Watters*, 12 Cox C.C. 390.

The justice may, in his discretion, regulate the course of the enquiry, in any way not inconsistent with the general provisions of the law: Code 679(e); and he may from time to time change the place of hearing: Code 679(c).

Excluding the Public.

All persons except the prosecutor and the accused, their counsel or solicitors may be excluded from the place where the hearing is taking place, if it appears that the ends of justice would be best served by so doing: Code 679(d); and under Code 645, the justice should order the exclusion of the public, on the hearing of any of the cases mentioned in that section; or in any case in which he is of opinion that it would be in the interests of public morals: Code 645(2); or when he deems such exclusion necessary or expedient: Code 645(3).

Excluding Witnesses.

At the request of either party the justice must exclude the witnesses on both sides.

Juvenile Offenders.

The hearing of the cases of juvenile offenders under sixteen years must be private, and their trial must take place without publicity and separately and apart from the trials of other accused persons and at suitable times to be designated for that purpose: Code 644.

Waiving Preliminary Examination.

The accused may waive the preliminary examination, and consent to be committed for trial without any evidence being taken: *R. v. Gibson*, 3 Can. Cr. Cas. 451. But if so committed without any depositions being taken the prisoner cannot elect to be tried before the County Court Judge's Criminal Court: *R. v. Gibson*, *supra*; *R. v. McDougall*, 8 Can. Cr. Cas. 234; *R. v. Jodrey*, 9 Can. Cr. Cas. 477; see also notes at p. 126, 5 Can. Cr. Cas. It is therefore necessary that in all cases some evidence should be taken.

Taking the Evidence.

The evidence of each witness in the case must be taken in writing, in the form of a deposition: Code 682(3).

The form of caption and ending of the deposition is given in the Criminal Code—Form 19. The caption or heading is to be filled up with the following particulars: 1. The names in full of the witnesses and their residence and occupation; 2. The names of the justice or justices who are hearing the case, and a statement that they are justices for the county where the evidence is being taken; 3. The date and place where the evidence is taken; 4. A statement of the charge under investigation; 5. A statement that the evidence is taken on oath or affirmation and in the presence of the accused: Code 682(2).

One caption, and ending will suffice for the depositions of any number of witnesses, in the same case, taken on the same occasion: *R. v. Hamilton*, 2 Can. Cr. Cas. 390; but if there is an adjournment to another day, a new caption and ending will be used for the witnesses then examined.

The depositions of several witnesses, taken on the same occasion, may be written on several sheets of paper, afterwards fastened together in any manner. The evidence must be read over to and signed by the witness in the presence of the accused and justice: Code 682(4). The signature of witnesses must not be taken in the defendant's absence: *R. v. Trevane*, 6 Can. Cr. Cas.

124. The signature of the justice may be either at the end of each witness's deposition; or at the end of all of the depositions, in such a form as to shew that the signature is intended to authenticate each witness's deposition (*e.g.*, by naming the witnesses referred to): Code 682(5). This must be done before the accused is called upon for his defence: Code 682(4). The depositions must be written in a legible hand, and on one side of the paper only: Code 683. All the requirements of Code 683 must be carefully followed, as if that is not done they may not be receivable at the trial.

It is not essential that the justice should write down the evidence with his own hand, anyone may do so at his request, but he must be present when all the evidence is being taken: *R. v. Traynor*, 4 Can. Cr. Cas. 410; and see notes in 7 Can. Cr. Cas. page 342.

If any part of the deposition is taken in his absence a commitment on it will be invalid. The accused must also be present during the taking of the whole of the evidence: Code 682(2). It will not suffice to read over to him any evidence taken in his absence and have it re-affirmed by the witness; the accused and his counsel have the right, with a view to cross-examination, to hear what the witness says, and observe how his answers are given. Any infringement of this rule will invalidate the commitment: *R. v. Watts*, 33 L.J.M.C. 63; *R. v. Traynor*, 4 Can. Cr. Cas. 410; *R. v. Lepine*, 4 Can. Cr. Cas. 145.

Taking Evidence in Shorthand.

If not taken in shorthand the evidence is to be written in a legible hand, and on one side of the paper only: Code 683.

If it is so desired, the evidence or any part of it may be taken in shorthand by a stenographer: Code 683; and in that event the depositions need not be read over to, nor signed by the witnesses; but the evidence is to be transcribed afterwards, and signed by the justice. An affidavit of the stenographer will be annexed, stating that it is a true report of the evidence: Code 683(2).

Oath of Stenographer.

The stenographer must be sworn before commencing to take down the evidence.

FORM OF STENOGRAPHER'S OATH.

"In the matter of the King v. C.D.; You swear that you shall truly and faithfully report the evidence to be given in this case; so help you God."

FORM OF AFFIRMATION.

(In case the stenographer objects to take an oath.)

"I, E.F., do solemnly affirm that I will truly and faithfully report the evidence to be given in this case": See Code 590(7).

An Affidavit of the Stenographer.

The transcript of the evidence is afterwards made out under the caption above mentioned: Form 19; and signed by the justice, with the following affidavit annexed: Code 683(2).

AFFIDAVIT OF STENOGRAPHER.

Province of Ontario. }
County of . } The King v. C.D.

I, E.F., of the of , county of (occupation), make oath and say (or do solemnly affirm):

1. That I am the stenographer appointed by G.H., Esq., one of His Majesty's justices of the peace in and for the county of , to report the evidence in this case.

2. That the transcript of evidence hereto annexed, signed by the said G.H., as such justice of the peace, is a true report of the evidence taken in this case before the said G.H., and taken down by me as such stenographer as aforesaid.

E.F.

Sworn (or affirmed), etc.

Evidence to be Taken Down Verbatim.

It should be taken in the witness's words as nearly as possible: R. v. Graham, 2 Can. Cr. Cas. 388. In R. v. Thomas, 7 C.

& P. 817, Parke, B., said: "Justices are required to put down all of the evidence, not merely what they deem material." They should record a full statement of all the witness says upon the matter; and everything of a material nature which may be said or done by the witness or the accused, in the presence of the justice during the course of the enquiry, should also be taken down: *R. v. Grady*, 7 C. & P. 650.

Witnesses Must be Sworn

Before giving evidence: Code 682(2). It is not sufficient to take down a witness's statements first and then swear him to the truth of them: *R. v. Kiddy*, 4 D. & R. 734. The oath need not be administered by the justice himself, though it is usually so done; his clerk or any person by his direction may administer it; but the justice must be present: 3 Russell 658(o).

Forms of Oaths.

The usual way is as follows: "In the case of the King v. C.D., you swear that the evidence you shall give touching the matter in question shall be the truth, the whole truth, and nothing but the truth: so help you God." The witness, holding the Bible in his naked right hand while this oath is being read, is then to kiss the Bible.

By the Ontario Statute of 1902, ch. 12, sec. 29, the use of the Bible may be dispensed with and the usual Scotch oath administered as follows:—

"I, A.B., do swear by God himself, as I shall answer to Him at the great day of judgment, that the evidence that I shall give touching the matter in question, is the truth, the whole truth, nothing but the truth: so help me God."

Witness Affirming Instead of Swearing.

A Moravian or Quaker is sworn as follows:—

"I, A.B., being one of the persons known as the united brethren called Moravians do solemnly, sincerely and truly declare and affirm," etc.

If any witness objects from conscientious scruples, to take an oath, or if he objects for any reason to do so, he may affirm in the following form: Can. Ev. Act, R.S.C. ch. 145, sec. 14:—

“I solemnly affirm that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth.”

Absence of Religious Belief

Does not disqualify a witness, but only affects the value of his testimony.

Such witness cannot be cross-examined as to his absence or otherwise of religious belief if he alleges either that he has, or that he has not, any religious belief: *R. v. Serva*, 2 C. & K. 53; but the justice should ascertain from the witness what his grounds are on which he objects to his oath; that is, whether it is because he has no religious belief, or because it is contrary to his religious belief: *R. v. Moore*, 61 L.J.M.C. 80.

Heathen Witnesses,

Are to be sworn in the form, and with the ceremony which they consider most binding on their consciences.

For instance: If the witness is a non-Christian Chinaman, “the King’s Oath” should be administered in the case of a capital offence, such as murder. If the offence is a minor one, the “paper oath” is sufficient: *R. v. Ah Wooley*, 8 Can. Cr. Cas. 25.

Forms of these oaths are given in 8 Can. Cr. Cas. 25. See also Roscoe 121.

An Indian Witness,

Or any witness, although non-Christian, if he believes in the future state and a Supreme Being, may be sworn in the same way as a Christian witness: *R. v. Pah-Mah-Gay*, 20 U.C.R. 195; and one who, although destitute of any knowledge of God, or of any fixed and clear belief in religion, or in the future state of rewards and punishment, may affirm (without oath) to tell the

truth, the whole truth and nothing but the truth, in such form as a Court approves: R.S.C. ch. 81, sec. 151; but in such case the justice must caution the witness that he will be liable to incur punishment if he does not tell the truth, the whole truth and nothing but the truth: section 153.

A Jew

Is sworn on the Pentateuch, with his head covered: Roscoe 148.

A Mahometan

Is sworn on the Koran; placing his left hand on his forehead and his right hand on the book, bringing the top of his forehead down to the book, and touching it with his head.

Deaf Mute Witness.

Such a witness may be sworn and give his evidence by signs, or by written questions and answers, or in any way in which he can be communicated with: Can. Ev. Act, R.S.C. ch. 145, sec. 6; and any one able to communicate with him by signs or otherwise may be sworn as an interpreter as mentioned below.

Interpreters.

Witnesses who cannot speak English may be sworn and examined through an interpreter.

The interpreter is first to be sworn, as follows:—

“You shall well and truly interpret the evidence to be given by the witness A.B. (*naming him*), so help you God.”

The interpreter will then, under direction of the justice, communicate the usual oath or affirmation to the witness and repeat the questions put, and the answers given. A witness who speaks two or more languages may be examined in that which he understands best, but if he can be communicated with in English the communication must be in that language; and the opposing counsel may first question the witness in English to test his competency to speak that language: *R. v. Wong On*, 2 Can. Cr. Cas. 343;

and he may if he chooses cross-examine in English without an interpreter if the witness has any knowledge of that language: same case.

Children as Witnesses.

In the case of a young child offered as a witness, the justice should first question him as to his knowledge of the nature of an oath, and his moral obligation in taking it and to tell the truth. If this does not appear, his evidence may nevertheless be taken, if the justice is of the opinion that the child is of sufficient intelligence, and understands the duty of speaking the truth; in that case the child will not be sworn, but his statements will be taken down in the usual way, like any other witness, and the justice will sign the statement noting the circumstances under which it was taken, and that it was without oath: See Can. Ev. Act; sec. 16.

Examination of Witnesses.

The witnesses for the prosecution are first called, and examined by the private prosecutor or his counsel, or by the Crown Attorney.

Cross-Examination.

The accused or his counsel or solicitor, is entitled to cross-examine all witnesses for the prosecution: Code 682(2); and the justice should so state to the accused before closing the evidence of each witness. The private prosecutor or his counsel may then re-examine the witness in explanation of anything said in cross-examination; not bringing in any new matter without the justice's permission, which the justice may grant; if there is any new matter permitted the accused must be allowed the opportunity to cross-examine as to it: *R. v. Perras*, 9 Can. Cr. Cas. 364.

When the witness's cross-examination was interrupted by his illness and no further opportunity was afterwards given the defendant to continue it, the commitment was held to be invalid: *R. v. Trevane*, 6 Can. Cr. Cas. 124.

Reading the Deposition to a Witness.

When the evidence of a witness is completed, it is to be read over to him (unless the evidence is taken in shorthand) as above explained, *ante* p. 45. On the evidence being read the witness may correct any error the justice may have made in taking down his statements, but if he wishes to change or withdraw anything he has actually said, this may be done at the end of the deposition, before he signs it.

If Witness Refuses to be Sworn

Or to answer questions, or to sign his deposition, when ordered to do so by the justice, without just excuse the justice may adjourn the case for not more than eight clear days, and may issue a warrant—Form 16 in the Criminal Code—committing the witness to gaol: Code 678. To justify a committal of a witness under this section it must appear that the witness not only refuses without just excuse to answer a question, but that the question asked was relevant to the issue; that is, that the matter asked about tended, either directly or indirectly, to prove or disprove a fact in issue, or some relevant fact: *Re Ayotte*, 9 Can. Cr. Cas. 133; *Phipson on Evidence* 43.

The justice should note the demand upon, and the refusal of the witness, and state any reason the witness gives; and the questions which the witness refuses to answer should be taken down, with the witness's statement regarding it, if any; and the justice should himself repeat the questions, or make the demand, formally to the witness. All the facts should be noted so as to shew the grounds on which the justice's warrant is issued. The accused will be remanded to gaol, or bailed, meantime.

If the witness "sooner," that is, before the expiry of the remand, signifies to the justice "his consent to do what is required of him," the parties should at once be notified, and brought before the justice, and the matter proceeded with: Code 678. At the time and place to which the case has been remanded (unless the witness has meantime consented to do what is required of

him), the parties and witness are to be brought before the justice, who will again demand of the witness, formally, to do what has been required; and upon refusal, may again adjourn the case and re-commit the witness for another period of not more than 8 clear days; and so on from time to time, until the witness obeys: Code 678(2). The justice may, however, proceed to dispose of the case without the evidence of this witness, if he sees fit: Code 678(3).

Reading Evidence Again at the Conclusion of the Prosecutor's Case.

When the evidence of the witnesses for the prosecution is completed, the prisoner is to be asked if he wishes the whole evidence taken to be read to him again; and it is to be so read, unless he dispenses with it: Code 684. The usual course is for the accused to dispense with the second reading of the evidence.

Warning to Accused.

When the evidence for the prosecution is completed the justice will note that fact on the proceedings and will then proceed in the manner directed by Code 684; and is to read to the accused the question and the warning provided by that section, the form of it will be found there.

Statement by Accused.

What he then says is to be taken down in writing in Form 20: Code 684(3).

It should be left entirely to the accused whether he will make any statement or not. A prisoner is not to be entrapped into making any statement, nor should he be dissuaded from doing so, because that would be shutting up one of the sources of justice: *R. v. Greene*, 5 C. & P. 312. If the statement is made in answer to a question by the justice, it is nevertheless receivable in evidence at the subsequent trial; but questions ought to be put only for the purpose of explaining anything the prisoner may have already stated. Questions calculated to lead to answers prejudi-

cial to the prisoner should not be asked; and the power of asking questions should be used with caution and discretion. Anything said by a prisoner in answer to cross-examination by or before the justice, in this connection, will not be allowed to be given in evidence at the trial: 3 Russell 542; R. v. Berriman, 6 Cox C.C. 388.

The statement of the accused should be taken down in the actual words used and should be read to the accused, and he should be got to sign it if he will; but he cannot be compelled to do so, nor is it necessary. He should not be sworn before making this statement. These observations only apply to statements taken under Code 684(3), and not to the statements made by the accused when subsequently called as a witness.

Evidence for Defence.

The justice will then proceed to ask the accused if he wishes to call any witnesses, and if so all the evidence for the defence must be taken: Code 686; including the evidence of himself as witness if he so desires: Can. Ev. Act; in which case he will, of course, be sworn like any other witness before giving his evidence.

Disposition of the Case.

There are four ways of disposing: 1. By dismissal; 2. By committing the prisoner for trial; 3. By bailing him for trial; 4. By binding the prosecutor to prosecute an indictment if he so requires.

1. Dismissal: Code 687.

2. By Committing the Accused for Trial.

Code 690; warrant Form 22 to the Criminal Code.

The question for the justice in deciding the case is, whether or not on considering the whole evidence on both sides, it is sufficient to put the accused upon his trial: Code 690. The jus-

tice is not to try the case, nor to decide between conflicting witnesses, any controverted fact. This is for a jury to decide under the judge's direction. If there is a substantial question to be tried the justice has no right to assume the functions of a judge and jury, but should commit the accused for trial. If, however, the evidence for the defence explains away the facts on which the prosecution is founded there remains nothing for trial; but if any substantial and apparently credible evidence is given by anyone, which if true would justify conviction, the justice should send the case up for trial. The justice may commit the accused for trial for any indictable offence which the evidence discloses, even if it is different from that laid in the information: See observations *ante* p. 31. But the justice cannot turn a preliminary enquiry for an indictable offence into a summary trial for a lesser offence, and convict the accused of the latter, even if the evidence proves him to be guilty of it. Fresh proceedings would have to be commenced and carried on in the manner described in the subsequent pages for a "summary conviction" case: *R. v. Lee*, 2 Can. Cr. Cas. 233; *Ex p. Duffy*, 8 Can. Cr. Cas. 277. Neither can a person be committed for trial for an offence which is within the justice's summary jurisdiction to convict: *R. v. Beauvais*, 7 Can. Cr. Cas. 494; *R. v. Lalonde*, 9 Can. Cr. Cas. 501; in which case a prisoner was in custody under a warrant according to the Form 22 of warrant of commitment for trial, but the offence stated in it was one in which the justices had power to summarily convict, and the prisoner was discharged on *habeas corpus*.

Warrant of Commitment.

If the justice decides to send the case up for trial he will issue a warrant of commitment: Form 22 to the Criminal Code.

To What Court Accused to be Committed.

The commitment is usually "to the next court of competent jurisdiction"; but by section 697 of the Criminal Code, the

accused may be committed for trial at the next sittings of the Court of General Sessions of the Peace for the county (even if the Assizes should intervene), in cases in which the General Sessions has jurisdiction. This is to prevent petty cases, triable at the General Sessions, from being sent to the Assizes. Code 582 gives the General Sessions jurisdiction over all indictable offences, except those specified in Code 583, to which refer. All cases which the Court of General Sessions has authority to try should as a general rule be sent to that Court, notwithstanding the Assizes may be held at an earlier date. After committal the justice is *functus officio* and cannot take bail and the prisoner must apply to the court if so advised.

3. Bailing the Accused for Trial.

Without committal: Code 696. If the justice is of opinion that the evidence is sufficient to put the accused on his trial, but that it does not furnish such a strong presumption of guilt as to justify committing him to gaol, he may admit the accused to bail, with one or more sureties, for his appearance for trial at the next General Sessions or Assizes as the case may require: Code 696. Form of recognizance, 28 in the Criminal Code. In this event, the justice must call in another justice with him to take the recognizance as it requires two justices if the offence is one for which the maximum punishment prescribed by the statute is more than five years' imprisonment; but if it is punishable with less than five years one justice alone may take the recognizance: Code 696.

If the offence is treason, or any offence punishable with death, or any of the offences mentioned in sections 76 to 86 inclusive of the Criminal Code, section 696 does not apply and the justices have no power to bail the prisoner accused of any such offences.

In taking bail as above mentioned, the proposed surety or sureties may be required to "justify," *e.g.*, to make an affidavit as to his property and other sufficiency as bail: Code 696(2).

Province of Ontario,
County of . }

1. That I am the surety (or one of the sureties) proposed and named for the above named A.B. in the recognizance in this matter hereto annexed.

2. That I am a freeholder (or householder) residing in the
of _____, in the county of _____.

3. That I am worth property to the amount of dollars over and above what will pay all my debts and liabilities and every other sum for which I am now liable, or for which I am bail or surety in any other matter.

4. That I am not bail nor surety for any person except in this matter and except (stating in what matter and for how much, if any).

5. That my said property consists of (describe what it consists of, e.g., farm stock, land, etc.), to the value of at least dollars.

Sworn before me at
of
in the county of ,
on the
day of , A.D. 19 .
J.P., county of .

(Signed) E.F.

If there are two sureties, a second affidavit similar to the foregoing will be added.

But if the surety is known to the justice to be sufficient no affidavit is necessary.

The question is chiefly as to the property qualification of the proposed sureties, but regard will also be had to their character

and standing: *R. v. Saunders*, 2 Cox 249; *R. v. Badger*, 4 Q.B. 468. Any householder having sufficient personal property out of which the amount of bail can be recovered, even if he is not a freeholder, may be accepted as bail: *Petersdorf on Bail*, 506.

Warrant of Commitment in Default of Bail

Under Code 696. If the accused does not give sufficient bail, the justice may commit him to gaol, by warrant: From 22 to the Criminal Code.

Recognizances of bail need not be signed by the parties, but must be signed and sealed by the justice. It is an obligation taken *viva voce* in court, and the procedure is for the justice to read the recognizance to the parties and at the conclusion ask them "Are you content?" to which they then signify their assent.

4. On Dismissal of Case, Prosecutor May be Bound Over to Prosecute.

If the justice dismisses the case the accused is entitled to be discharged: Code 687. But if the prosecutor still expresses his desire to carry the case before the grand jury, he has the right to do so; and in that event, and upon the prosecutor's request, the justice must take his recognizance to prosecute an indictment against the accused before the grand jury at the next court of competent jurisdiction: Code 688; recognizance, Form 21 to the Criminal Code.

The justice cannot refuse this request, but must take the prosecutor's recognizance to prosecute, if so requested by the prosecutor, and if the information or evidence alleges an offence known to the law: *R. v. Eyre*, L.R. 3 Q.B. 487; *R. v. London* (Jus.) 16 Cox C.C. 77; but if the information and evidence shew that the charge (even if true) is an impossible one, the justice would rightly decline to bind over the prosecutor: *Ex p. Wason*, L.R. 4 Q.B. 573.

This recognizance can only be by a person who has preferred the charge before the justice. See 10 Can. Cr. Cas. 216.

Binding Over Prosecutor and Witnesses for the Trial.

Upon committing the accused for trial the prosecutor and witnesses should be required to enter into their own recognizance to appear at the trial and give evidence: Code 692; Forms 23, 24 or 25 to the Criminal Code. If a witness refuses to be bound over the justice may, if he thinks it necessary commit him to gaol: Form 26; until the trial or until he consents to be bound over, when any justice may take the recognizance and order the witness's release: Code 694.

Proceedings to be Sent to the Clerk of the Peace.

This should be done without delay after the accused has been committed for trial: Code 695.

Taking Bail Under Judge's Order: Code 698.

Upon a judge's order for bail being brought before any two justices for the county the accused and sureties are to be also brought before the justice, who will take their recognizance for bail, which may be in a form similar to Form 28 of the Criminal Code.

The justices may, before taking the recognizance, require the proposed sureties to be sworn, and examined on behalf of the prosecutor as to their property and liabilities. No question can be put to them except as to their property and means. The justices are to decide as to the sureties' sufficiency; and if they are not sufficient, others must be obtained, and the accused will meantime remain in custody.

Upon taking the recognizance of bail, the justices are to issue a warrant of deliverance—Form 29; See Code 698(2), and 702, and the warrant of deliverance, with the judge's order of bail attached—Code 698—are to be delivered to the gaoler, who must forthwith release the accused, unless he is detained for some other offence: Code 702.

Surrender of Accused by Sureties after being Bailed: Code 703.

If, after the accused has been released on bail, there is reason to believe that he is about to abscond, one of the sureties, or some person by his authority, may appear before any justice and lay an information in the following form:—

FORM OF INFORMATION.**Under Code 703.**

Canada.

Province of

County of

)
 ,
 .

The information of A.B., of the of in the county of (*occupation*), taken this day of , A.D. 19 , before the undersigned K.L., one of His Majesty's justices of the peace in and for the county of , who saith that the said A.B., together with C.D. (*insert names of sureties*), were on the day of , A.D. 19 , duly bound by recognizance before E.F., Esquire, a justice of the peace in and for the said county of , conditioned for the appearance of G.H., at the then next court of competent jurisdiction (*or as the case may be*), and then and there surrender himself into the custody of the keeper of the common gaol at , in the said county, and plead to such indictment as should be found against him by the grand jury, in respect of a charge upon which he had theretofore been committed for trial, namely: (*state the charge*), and stand his trial thereon and not depart the said court without leave; and that there is reason to believe that the said G.H. is about to abscond for the purpose of evading justice in the premises.

Sworn, etc.

(Sgd.) A.B.

(Sgd.) K.L.,

J.P., county of .

On hearing the facts alleged, the justice may issue a warrant for the re-arrest of the accused: Code 703.

Under Code 703.

County of

Whereas A.B. and C.D. were on the day of , A.D. 19 , duly bound by recognizance before E.F., Esquire, a justice of the peace in and for the said county of , conditioned for the appearance of G.H. at the next court of competent jurisdiction (*or as the case may be, following the statements in the above information*), and then and there surrender himself into the custody of the keeper of the common goal at , in the said county, and plead to such indictment as should be found against him by the grand jury, in respect of a charge upon which he had theretofore been committed for trial, namely: (*state the charge*), and stand his trial thereon, and not depart the said court without leave. And whereas information has been this day laid before the undersigned K.L., a justice of the peace in and for the county of , by (or, on behalf of) the said A.B. and C.D. (*or, as the case may be*), that there is reason to believe that the said G.H. is about to abscond for the purpose of evading justice in the premises.

*These are therefore to command you, the said constables, or other peace officers, or any of you, in His Majesty's name, forthwith to apprehend the said G.H., and to bring him before me, or some other justice or justices in and for the said county of _____, in order that he may be further dealt with according to the law.

Given under my hand and seal at the _____ of _____ in the
said county of _____, this _____ day of _____, A.D. 19 ____.

(Sgd.) E.F., (Seal.)
J.P., county of _____.

The warrant may be executed in the manner described at p. 28, for the arrest of the accused in the first instance.

Upon the accused (and the prosecutor, who should also be notified) being brought before the justice, evidence will be taken in the usual way; and if the evidence satisfies the justice that the ends of justice would otherwise be defeated, he may commit the accused to prison until his trial, or until the accused produces other sufficient surety or sureties in like manner as before: Code 703.

WARRANT OF COMMITMENT. Under Code 703.

Proceed as in the next preceding form down to the asterisk.*

And whereas I (or the said , naming the justice who issued the above warrant to apprehend) did thereupon issue my (or his) warrant to the constables and all other peace officers for the said county to apprehend the said G.H., and bring him before me (or the said), or some other justice or justices in and for the said county, to be dealt with according to law.

And whereas the said G.H. has been apprehended under the said warrant, and is now brought before me, the undersigned, one of His Majesty's justices of the peace in and for the said county of , and it thereupon appearing to my satisfaction, upon hearing the evidence then adduced in the presence of the said G.H., that the ends of justice would otherwise be defeated;

These are therefore to command you, the said constables or peace officers in His Majesty's name, forthwith to take and safely convey the said G.H. to the said common gaol at , in the said county of , and there deliver him to the keeper thereof; and I hereby command you, the said keeper, to receive the said G.H. into your custody in the said common gaol, and him there safely to keep until his trial, or until he produces another sufficient surety or sureties in this behalf.

Given under my hand and seal at the of in the county of , this day of , A.D. 19 .

(Sgd.) E.F., (Seal.)

J.P., county of .

If other sureties are allowed to be given, and are produced, two justices, without any further order, may take a new recognizance in the same manner as before, and issue another warrant of deliverance: See *ante* p. 58.

Costs in Preliminary Enquiries.

Prior to the Ontario Statutes of 1904, ch. 13, secs. 1 and 3, justices were not entitled to any fees in a preliminary enquiry in indictable offences. But by that statute a justice is now entitled to be paid by the county a lump sum of \$2 for all services in connection with the case where the time occupied is not more than two hours, with 50c. per hour every additional hour. The account for this fee, in the following form, should be sent to the clerk of the peace to be paid by the county treasurer on the order of the county board of audit of criminal justice accounts. This board sits quarterly early in the months of January, April, July and October for the purpose of examining such accounts.

FORM OF JUSTICE'S ACCOUNT.

Goderich, , 190 .

The county of Huron.

To E.H., J.P.

190 .

(Date)

To all services in the preliminary enquiry in the case of Rex v. G.H. for (*name the charge*) hours, \$.

An affidavit or declaration is required verifying the account (form of which will be supplied by the clerk of the peace on application to him).

As only one justice is required to sit on a preliminary enquiry, though several justices may join, only one fee can be paid, that being all that the statute authorizes. The parties to prosecutions for indictable offences are not liable for any costs, whatever the result of the enquiry may be; and it would be illegal for any

justice to receive any costs from either party. A penalty of \$40 and costs may be imposed upon any justice who illegally receives fees: Ontario Statutes 1904, ch. 13, sec. 2. The costs provided by the tariff contained in Code 770 and in R.S.O. ch. 95, have no application to these proceedings, but only to cases of summary convictions.

The Constable's Costs.

The tariff of these is given in R.S.O., p. 1046. The fees of constables in connection with preliminary enquiries in indictable offences cases are payable by the province, if the accused is committed or bailed for trial; but if the case is dismissed the constables' fees are payable by the county. In either case the account should be made out and sworn to, on a form which will be furnished by the clerk of the peace. These accounts should be sent to the clerk of the peace quarterly, for submission to the Board of Audit.

If assistance is necessary in making an arrest, the party whether a constable or private person, who assists, is entitled to \$1.50 besides mileage at 13c. per mile one way, for such assistance. The person assisting must make out and send to the clerk of the peace an account for it in a similar form to a constable's account; with usual affidavit.

In making out these accounts care must be taken to give the date for each item of work done; also the exact place from, and to which (with lot and concession of township) the constable travelled should be shewn in the item for mileage.

If a constable cannot find the accused to make an arrest or serve a summons, at the place to which he goes, he is entitled to his mileage on shewing by his account or affidavit that he used due diligence and the reason for failure.

The mileage covers the conveyance, or railway fares and hotel bills of the constable, but not those for conveying the

prisoner to the justice, or to gaol. Necessary meals for the prisoner are also allowed.

Accounts against the province must be in duplicate, but those against the county need not be.

Witness' Fees.

There are no witness' fees allowed in preliminary enquiries; the tariff in Code 770 only applying to summary conviction ~~cases~~.

ALPHABETICAL

SYNOPSIS OR LIST OF INDICTABLE OFFENCES IN WHICH JUSTICE
IS TO HOLD A PRELIMINARY ENQUIRY.

One Justice Sitting Alone has Authority to Conduct any Preliminary Enquiry as Described in the Preceding Chapter.

Abandonment of Child Under Two Years Old.

Code 245.

That A.B. at _____, on _____, A.D. 19____, did unlawfully abandon and expose A., a child (or a child whose name is unknown) then under the age of two years, whereby the health of the said child is permanently injured (or, whereby the life of the said child was endangered).

Abduction.*Of an Heiress: Code 314(a).*

A.B., on _____, at _____, did, for motives of lucre, unlawfully take away (or detain), against her will, a woman, named C.D., with intent to marry (or carnally know) the said C.D., or with intent to cause her to be married to (or carnally known by) E.F., she the said C.D., then having a legal (or equitable) present absolute (or future absolute, or future conditional, or contingent) interest in real (or personal) estate; or, she then being a presumptive heiress (or co-heiress, or presumptive next of kin) of G.H., who then had a legal (or equitable) present absolute (or future absolute, or future conditional, or contingent) interest in real (or personal) estate.

Of Woman Under 21 Years: Code 314(b).

A.B., on _____, at _____, with intent to marry (or carnally know) a woman, named C.D., she then being under the age of

21 years, did fraudulently allure (*or take away, or detain*) the said C.D. out of the possession, and against the will, of her father) or mother, *or of E.F., a person having the lawful care (or charge) of her, the said C.D.*

Of a Girl Under Sixteen: Code 315.

A.B. on , at , did unlawfully take (*or cause to be taken*) an unmarried girl named C.D. out of the possession and against the will of her father (*or mother, or of E.F., a person then having the lawful care or charge of her, the said C.D.*) she, the said C.D. then being under the age of 16 years.

Of a Woman of Any Age: Code 313.

A.B., on , at , did unlawfully take away (*or detain*) against her will a woman, named C.D., with intent to marry her (*or carnally know her*), or with intent to cause her to be married to (*or carnally known by*) E.F.

Children Under Fourteen: Code 316(a).

A.B., on , at , did unlawfully take (*or entice*) away (*or detain*) a child named C.D., then under the age of 14 years, with intent to steal a certain article, namely: (*describe the article*) then being on or about the person of the said child; *or with intent to deprive E.F., the parent (or the guardian, or the person then having lawful charge) of the said child of the possession of such child, (or if the charge is under Code 316(b) the above from may be changed so as to state the charge to be that of "receiving or harbouring" the child "knowing it to have been theretofore taken," etc.).*

Abduction.

Code 297. *See Kidnapping.*

Abortion.*Advertising Drug to Procure: Code 207(c).*

A.B. at , on , did unlawfully, knowingly and without lawful excuse or justification publish an advertisement of (or offer to sell or had for sale or disposal) a medicine (or drug, or any article stating by what name it is called) intended (or represented) as a means of preventing conception (or causing of abortion or miscarriage).

Attempt to Procure: Code 303.

A.B., on , at , did unlawfully administer to (or cause to be taken by) a woman, to wit, C.D., a drug (or "a noxious thing") to wit (state what the drug or noxious thing was), with intent to procure the miscarriage of the said C.D., or did unlawfully use upon a woman, to wit, C.D., an instrument (or if other means were taken describe them), with intent thereby to procure the miscarriage of the said C.D.

Woman Procuring, on Herself: Code 304.

A.B., a woman, did on , at , unlawfully administer to herself (or permit to be administered to her, the said A.B.) a drug (or a noxious thing), namely, (state what), with intent thereby to procure her miscarriage, or did unlawfully use upon herself (or permit to be used on her) an instrument (or if other means are used describe them) with intent, etc., as in the next preceding form.

Supplying Drugs to Procure: Code 305.

A.B., on , at , did unlawfully supply to C.D. (or procure) a drug (or a noxious thing, or "an instrument," or if any other thing, name it), the said A.B. then knowing that the same was intended to be unlawfully used or employed, with intent to procure the miscarriage of a woman, to wit, E.F.

Killing Unborn Child: Code 306.

A.B., at _____, on _____, A.D. 19____, did unlawfully and wilfully, and with malice aforethought, cause the death of a child of one (C.D.), which was then unborn and which had not then become a human being.

Accessory Before the Fact

Is chargeable as a principal, with the offence: Code 69, 70, 260.

After the Fact.

Or who assists the principal to escape, is chargeable as such: Code 71, 574, 575.

That on _____ at _____ some person or persons unknown (or A.B.) did unlawfully (*state the offence committed according to the form given for it*) and the said C.D. (*the informant*) has just cause to suspect and does suspect that E.F., well knowing the said person (or the said A.B.) to have so committed the said offence, did afterwards unlawfully receive (or comfort) the said person (or the said A.B.) (or assist the said person or the said A.B.) in order to enable the said person (or the said A.B.) to escape.

The Offence of Being such Accessory is Indictable, if the Principal Offence was so.

Accusing of Crime and Compounding Same.

Code 453, 454. See Extortion, etc.

Adulteration of Food.

See Food.

Affray.

Code 100.

A.B. and C.D. on did commit the act of fighting on the public street (or highway) in the said (or did commit the act of fighting to the alarm of the public in the bar-room of the hotel known as the Hotel on the said of , being a place which the public then had access, or state any other public place) and thereby then and there unlawfully take part in an affray.

Apprentice or Servant.

Master Neglecting to Provide Necessaries for: Code 243.
See "Neglect."

Causing Bodily Harm to: Code 249.

A.B. on , at , being then and there the master of C.D., an apprentice (or a servant) and being legally liable to provide for the said C.D. as such apprentice (or servant) unlawfully did bodily harm to the said C.D. (state the nature of the harm and how inflicted) whereby the life of the said C.D. was endangered (or the health of the said C.D. was likely to be permanently injured).

Arms.

See Weapons.

Arson.

See Fire, Illegal Use of.

Assault.

Causing Bodily Harm: Code 295.

A.B. at , on , did unlawfully commit an assault and beat C.D., and did thereby then and there occasion actual bodily harm to him the said C.D.

With Intent to Commit any Indictable Offence: Code 296(a).

On _____, at _____, A.B. did unlawfully assault C.D. with intent to commit an indictable offence, namely, (*describe the offence intended, following the form of charge for the offence*).

On Constable, etc.: Code 296(b).

On _____, at _____, A.B. did unlawfully assault C.D., a public officer (*or a peace officer*), to wit, a constable of the said county of _____, (*or as the case may be*), then and there engaged in the execution of his duty as such constable, to wit, while (*describe the duty being performed*).

On Constable to Resist Arrest: Code 296(c).

On _____, at _____, A.B. did unlawfully assault C.D. with intent to resist (*or prevent*) the lawful apprehension (*or detainer*) of him the said A.B. (*or one C.*) for a certain offence, to wit, (*state the offence according to the forms given*).

On Officer Executing Legal Process: Code 296(d).

On _____, at _____, A.B. did unlawfully assault C.D. who was then and there, in his quality of a duly appointed bailiff of (*state the court*), duly engaged in the lawful execution of a certain process duly issued out of the said Court in a case of E.F. and G.H., and directed to the said C.D. as such bailiff against (*or in the making of a lawful seizure of lands or goods*), *or* with intent to rescue certain goods which had then and there been taken under such process.

During an Election: Code 296(e).

A.B., on _____, at _____, being a day upon which a poll for an election of (*a member of the Dominion Parliament or*

of the Legislative Assembly for the said county, *or* for municipal councillors for the municipality of), was there being held and proceeded with, did, within a distance of two miles from (*state the place*), where a poll in the said election was then being taken and held, unlawfully assault (*or* assault and beat) C.D.

Lying in Wait for Persons Returning From Public Meeting:

Code 128.

A.B., at , on , did unlawfully lie in wait for C.D., who was then returning (*or* expected to return) from a public meeting, with intent then and there to commit an assault, upon the said C.D. (*or* with intent by abusive language, opprobrious epithets or other offensive demeanour directed to the said C.D., to provoke him, or those who accompanied him, to a breach of the peace).

Indecent, on Females: Code 292(a).

On , at , A.B. unlawfully and indecently did assault C.D., a female.

or (b).

On , at , A.B. unlawfully did (*state what the act was*) to C.D., a female, by her consent, such consent having been obtained by false and fraudulent representations, that the said A.B. was a medical practitioner, and that such act was necessary in order to the medical treatment of the said C.D. by the said A.B. (*or as the case may be*).

Indecent, on Males: Code 293.

On , at , A.B., a male person, unlawfully and indecently did assault C.D., another male person (*or* assault C.D. with intent to commit sodomy).

And Wounding. See Wounding.

On Workman. See Workman.

Attempts.

Code 570-572.

A.B. at , on , did unlawfully attempt to (*state the offence attempted in the words of the form given*).

Bawdy House.

See Disorderly House.

Bestiality.

See Buggery.

Betting.

See Gambling.

Bigamy.

Code 307, 308.

A.B., on , at , being then a man (*or woman*) already married, did unlawfully marry, and go through a form of marriage with another woman (*or man*), to wit, C.D., and did thereby commit bigamy.

Births, Deaths, etc.

Defacing, etc., Official Register: Code 480.

A.B., at , on , did unlawfully destroy (*or deface or injure or insert an entry then well-known by him to be false, stating what*) in a register of births (*or of deaths, or of marriages or baptisms*) authorized to be kept by the laws of the Province of Ontario, by the division registrar for the municipality of the of in the said county of .

Issuing False Certificate of, and Other Offences: Code 481.
482.

Blasphemous Libel.

Code 198. *See* Libel.

Breach of Contract.

Code 499.

At _____, on _____, A.B. unlawfully and wilfully did break a certain contract, namely (*describe it and state how broken*) theretofore made by him, he then well knowing (*or having reasonable cause to believe*) that the probable consequence of his so doing would be to endanger human life (*or cause serious bodily injury to others, or expose valuable property to destruction or serious injury*).

Other charges for offences under the sub-sections to Code 499 may be framed from the above in regard to contracts for

Supplying Electric Light; or Water, or Carrying the Mails.

Defacing Notices as to: Code 500. *See also* under "Workmen."

Breaking Prison.

See Escape.

Bribery in Election.

R.S.C. ch. 6, sec. 265.

Bribery of Witness or Juryman.

Code 180.

A.B., at _____, on _____, did unlawfully dissuade (*or attempt to dissuade*) one C.D. by threats (*describe*) or bribe (*stating it*), or by corrupt means, to wit (*describe*) from giving

evidence in a civil (or criminal) cause (or matter) then pending in _____, between (style of cause);
or (b).

Did influence (or attempt to influence) by (describe the means as in the preceding form), a juryman, to wit, C.D., then summoned as a juryman to serve as such at the Court of General Sessions of the Peace, then to be held at _____, in and for the county of _____, (or as the case may be), in his conduct as such juryman;

or (c).

Did unlawfully accept a bribe, to wit, _____ (or any other corrupt consideration stating it), to abstain from giving evidence in a certain matter (or cause) then pending in _____, or on account of his conduct as a juryman at _____;

or (d).

Did unlawfully attempt to obstruct (or pervert, or defeat) the course of justice by (stating the corrupt means used).

Bribing Officer of Justice, etc.

Code 157.

A.B. then being a peace officer, to wit, a constable for the county (or district) of _____, employed as such for the detection or prosecution of offenders, did unlawfully and corruptly accept (or obtain, or agree to accept, or attempt to obtain) for himself (or for one C.D.) a certain sum of money, to wit, the sum of _____ (or a certain valuable consideration, or an office or place of employment, stating it) with intent to interfere corruptly with the due administration of justice (or to protect from detection and punishment one E.F. a person who had committed or intended to commit the crime of (stating it)).

Bribing Member of Parliament: Code 156.

Gifts, etc., to Officers of the Government: Code 158(a).

Government Officer Accepting Gifts, etc.: Code 158.

Breach of Trust by Public Officer: Code 160.

Corruption in Municipal Affairs: Code 161, 163.

Selling or Buying Office: Code 162.

Bucket Shop.

Keeping: Code 231, 232.

A.B., in his premises at _____, on _____, did unlawfully make a contract with C.D. purporting to be for the sale of certain stock in (*name the company; or of certain goods; or merchandise, to wit, wheat, or state whatever the thing purporting to be dealt in was*) in respect of which no delivery was made or received and without the *bonâ fide* intention to make such delivery and with intent to make gain or profit by the rise or fall of the said stock (*or merchandise, etc.*), and the said A.B. was thereby then and there a keeper of a common gaming house.

Frequenting: Code 233.

A.B. on _____, at _____, did unlawfully habitually frequent an office wherein the unlawful making of contracts purporting to be for the sale of (*etc., proceed as in the above form*).

Buggery.

Code 202, 203.

A.B. at _____, on _____, did unlawfully commit (*or attempt to commit*) the abominable crime of buggery with a living animal, to wit, a mare (*or with C.D.*).

Burglary and Housebreaking, etc.

Burglary: Code 457(a).

A.B., at _____, on _____, A.D. 19____, by night, unlawfully and burglariously did break and enter the dwelling-

house of C.D., there situated, with intent unlawfully to commit, in the said dwelling-house, an indictable offence, to wit (*state the offence committed as*) the crime of theft.

or (b).

Did by night, unlawfully break out of the dwelling-house of C.D., there situated, after having committed an indictable offence therein, to wit (*state the offence*), *or* after having unlawfully entered the said dwelling-house with intent to commit an indictable offence therein, to wit, (*state the offence*). *If the accused had a weapon in his possession add an averment to that effect.*

or 458(a).

Did unlawfully break and enter by day the dwelling-house of C.D., there situated, and did then and there commit an indictable offence in the said dwelling-house, to wit (*state the offence*).

or (b).

Follow the next preceding form, substituting the words "break out of the dwelling-house of C.D., there situated, after having committed," *etc.*

or Code 459.

Did unlawfully by day break and enter the dwelling-house of C.D., there situated, with intent to commit an indictable offence therein, to wit (*state the offence*).

or Code 460.

Did unlawfully break and enter the shop of C.D. there situated (*or any of the other places named in this section, or a building within the curtilage of the dwelling-house of the said C.D. there situated*)*, and did then and there commit in the said shop (*or other place mentioned*) an indictable offence, to wit, (*state the offence*).

or Code 461.

*With intent to commit therein an indictable offence, to wit (*state the offence*).

or Code 462.

Did unlawfully by night enter (*or was by night unlawfully in*) the dwelling-house of C.D. therein situated, with intent to

commit an indictable offence therein, to wit (*state the offence, e.g.*), unlawfully to steal the goods and chattels of the said C.D.

Being Found Armed with Intent to Break a Dwelling-house: Code 463(a).

A.B., at _____, on _____, was found by day unlawfully armed with a dangerous or offensive weapon (*or instrument*), to wit, (*mention what it was*), with intent to break and enter into the dwelling-house of C.D., there situated, and to commit an indictable offence therein.

or (b).

(The same form to be used by substituting the words "by night" instead of "by day," and "a building" instead of "dwelling-house.")

Housebreaking instruments, Being Disguised or in Possession of: Code 464(a).

Was found by night unlawfully, and without lawful excuse, in possession of an instrument of housebreaking, to wit (*describe it*).

or 464(b).

Was found by day unlawfully having in his possession an instrument of housebreaking, to wit (*describe it*) with intent to commit an indictable offence, to wit (*burglary, or as the case may be*).

or 464(c).

Was found by night unlawfully, and without lawful excuse, with his face masked (*or blackened, or disguised by, stating the manner of the disguise*).

or 464(d).

Was found by day unlawfully having his face masked (*or blackened, or disguised by, stating how*), with intent to commit an indictable offence, to wit (*state the offence intended, such as, to commit an assault upon C.D.*).

Of Place of Worship: Code 455.

A.B., at _____, on _____, did unlawfully break and enter a place of public worship, to wit (*describe the place*), and therein did commit an indictable offence, to wit (*state the offence, for instance, did steal; mention the article*) the property of C.D.

or

Did unlawfully commit an indictable offence, to wit (*state the offence*), in a place of public worship, to wit (*name the place*) and that after committing the said offence, in the said place of public worship, the said A.B. did then and there unlawfully break out of the said place of public worship.

or 456.

Did unlawfully break and enter a place of public worship (*name the place*) with intent then and there unlawfully to (*state the offence*) therein.

Cheating at Play.

Code 442.

A.B., at _____, on _____, unlawfully, and with intent to defraud C.D., did cheat in playing at a game with cards (*or other game stating it*); or in holding the stakes; or in betting on the event of (*state the event bet on*).

Childbirth.

Neglect to Obtain Assistance in: Code 271.

A.B., at _____, on _____, she being then with child, and about to be delivered thereof, unlawfully did neglect to provide reasonable assistance in her delivery, whereby the child of which she was then delivered was permanently injured (*or died just before, or during, or shortly after, birth*), the intent of such neglect being that the child should not live (*or to conceal the fact of the said A.B. having had a child*).

Concealing Dead Body of Child: Code 272.

A.B., at _____, on _____, with intent to conceal the fact that the said A.B. (or one, C.D.) had been delivered of a child, did unlawfully dispose of the dead body of the said child, of which the said A.B. (or C.D.) had been so delivered, by (*state the disposition made of the body, e.g., by placing it in a water closet*).

Choking, etc., to Commit Crime.

See Garroting.

Clergyman.***Obstructing or Offering Violence to an Officiating: Code 199.***

A.B., on _____, at _____, by threats (or force) did unlawfully obstruct (or prevent, or endeavour to obstruct or prevent) C.D., a clergyman or minister, in (or from) celebrating divine service in the church, or meeting house, or school house (or other place for divine worship, naming or otherwise describing it), or in, or from, the performance of his duty in the lawful burial of the dead in the churchyard (or cemetery, or other burial place, naming or describing it, and describe the nature of the obstruction offered).

or Code 200.

Did unlawfully strike (or offer violence, to or upon a civil process, or under pretence of executing a civil process did arrest) C.D., a clergyman, who was then engaged in (or to the knowledge of the said A.B. was then about to engage in proceed as in previous form).

Coinage Offences.

Code 546-569.

Counterfeiting Coins: Code 552(a).

A.B. did unlawfully * make (or begin to make) a counterfeit coin resembling (or apparently intended to resemble or pass for) a current gold (or silver) coin known as a five dollar gold (or a fifty cent silver) piece.

or (b).

*Gild or silver a coin resembling (or apparently intended to resemble or pass for) a current gold (or silver) coin.

or (c).

*Gild (or silver) a piece of silver (or copper, or coarse gold, or coarse silver, or a metal or mixture of metals) being of a fit size and figure to be coined, with intent that the same shall be coined into counterfeit coin resembling (or apparently intended to resemble or pass for) a current gold (or silver) coin known as a five dollar gold (or a twenty-five cent silver) piece.

or (d).

*Gild (or file, or alter, *describing how*) a current silver coin, known as a twenty-five cent silver piece, with intent to make the same resemble (or pass for) a current gold coin, to wit, a five dollar gold piece.

or (e).

Gild (or silver) a current copper coin (or file or alter, *describing how*) a current copper coin known as a one-cent piece, with intent to make the same resemble (or pass for) a current gold coin known as a five dollar gold piece (or a current silver coin known as a twenty-five cent piece).

Clipping Current Coin: Code 558.

A.B., at _____, on _____, did unlawfully impair (or diminish or lighten) a current gold (or silver) coin called a one dollar gold coin (or a fifty cent or ten cent silver coin), with intent that the said piece so impaired (or diminished or lightened) might pass for a current gold (or silver) coin.

Defacing Current Coins: Code 559.

A.B., at _____, on _____, did unlawfully deface one current gold (or silver or copper) coin, to wit (*describe the coin*) by stamping thereon certain names or words, to wit (*describe*), and did afterwards unlawfully tender the same.

Current Coin, Possessing Clippings of: Code 560.

A.B., at _____, on _____, unlawfully had in his possession, or custody, certain filings or clippings (or certain gold; or silver bullion; or certain gold, or silver in dust, or solution, or otherwise stating how), which were produced or obtained by impairing (or diminishing, or lighting) gold (or silver) coin, he then knowing the same to have been so produced or obtained.

Counterfeit Coins, Possessing: Code 561(a).

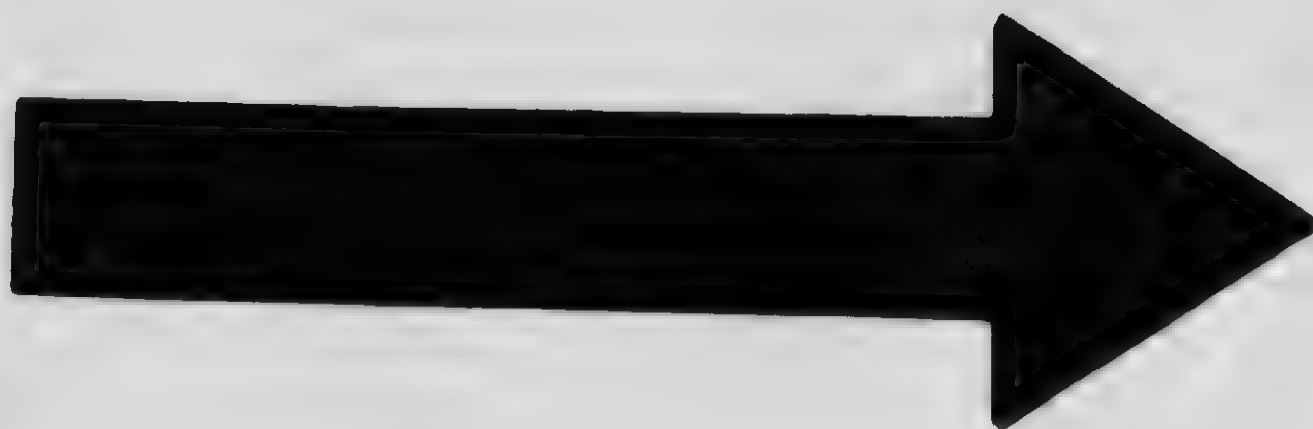
A.B., at _____, on _____, unlawfully had in his custody, or possession, one counterfeit coin resembling, or apparently intended to resemble or pass for a current gold (or silver coin), to wit (*describe it*), with intent to utter the same, he then knowing the same to be counterfeit.

or Code 561(b).

Had in his custody or possession, three (or more than three) pieces of counterfeit coin resembling, or apparently intended to resemble, or pass for current copper coins called one cent pieces, with intent to utter the same, he then knowing the same to be counterfeit.

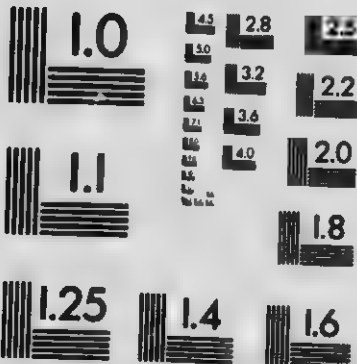
Foreign Coins, Offences Respecting: Code 563(a).

A.B., at _____, on _____, did unlawfully make, or begin to make, a counterfeit coin resembling, or apparently intended to resemble, or pass for a gold (or silver) coin of a foreign country, to wit, the gold (or silver) coin (*name the country*) called (*name the coin*).



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Uttering Light Coins or Medals: Code 565.

A.B., at _____, on _____, did unlawfully utter as being current a certain silver coin, to wit, a silver dollar of less than its lawful weight, he, the said A.B., then well knowing the said coin to have been impaired (*or diminished, or lightened*) otherwise than by lawful wear.

or (b).

Unlawfully, and with intent to defraud, did utter, as being a current silver dollar, a certain silver coin, not being a current silver coin, but resembling in size, figure and colour a current silver dollar, and being of less value than a current silver dollar.

or (b).

Unlawfully, and with intent to defraud, did utter, as being a current silver dollar, a certain medal (*or piece of metal*), resembling, in size, figure and colour, a current silver dollar, and being of less value than a current silver dollar.

or (c).

Did unlawfully utter to C.D., one piece of counterfeit coin resembling (*or apparently intended to resemble and pass for*) the current copper coin called one cent, he, the said A.B., then well knowing the same to be counterfeit.

Uncurrent Copper Coins, Uttering: Code 567.

A.B., at _____, on _____, did unlawfully and with intent to defraud, utter, or offer in payment a copper coin, other than current copper coin, to wit (*describe the coin*).

Counterfeit Money, Advertising, etc.: Code 569.

A.B., at _____, on _____, did unlawfully print (*or write, or state any other means of advertising, etc., mentioned in Code 569(a)*), a letter (*or writing, or circular, or other thing mentioned, stating it*) advertising (*or offering, or purporting to advertise, or offer*) for sale, (*or loan, as the case may be, using the words of the*

statute), or to furnish, or procure or distribute (*as the case may be*), any counterfeit token of value, or a (*counterfeit bank note of the bank of* , or other thing, naming it), which purported to be a counterfeit token of value.

Coining, Making Instruments for: Code 556(a).

A.B., at , on , did unlawfully and without lawful authority or excuse make (*or mend: or begin, or proceed to make or mend; or buy or sell; or have in his custody or possession*) one puncheon (*or describe the instrument*) in or upon which there was then made and impressed, or which would make and impress, or which was adapted and intended to make and impress the figure, or stamp or apparent resemblance, of one of the sides of a current gold or silver coin, to wit (*describe the coin*).
or (b).

A.B., did (*as above*) make, (*etc., as above*), one edger (*or as the case may be*) adapted and intended for the marking of coin around the edges, with letters (*or gleaning, or marks or figures*) apparently resembling those on the edges of a current gold or silver coin, to wit (*describe the coin*), he then knowing the same to be so adapted and intended.

Counterfeit Coin, Dealing in: Code 562(ii).

A.B., at , on , did unlawfully and without lawful authority or excuse buy (*or sell, or receive, or pay out, or put off*) one piece of counterfeit coin resembling (*or apparently intended to resemble or pass for*) a current silver fifty cent piece (*or gold five dollar piece, or as the case may be*) of current money at and for a lower rate and value than the same imported (*or was apparently intended to import*).

Company.

False Prospectus of: Code 414.

A.B. (*etc.*), being then a promoter (*or manager, etc.*) of a public company (*or body corporate*) then intended to be formed

(or then existing) and called (*name of company*) did unlawfully make (or circulate, or publish) a prospectus which he then well knew to be false in the following material particulars (*set out the false statements*) with intent to induce persons to become shareholders in the said company (or with intent to deceive the members or shareholders, or creditors of the said company).

False Prospectus of Company under Ontario Law: Ont. St. 1906, ch. 27, secs. 6, 7. One justice may summarily convict under the Ontario Statute.

Compounding Penal Actions.

Code 181.

A.B., at , on , having theretofore brought (or under colour of bringing) an action in (*state what Court*) against C.D., in order to obtain from him a penalty under a penal statute, namely (*state what statute*), did unlawfully compound the said action without the order or consent of the said Court.

Covering Up Offences.

Taking Reward for: Code 182. See Rewards.

Concealment of Birth.

See Childbirth.

Conspiracy to Commit an Indictable Offence.

Code 573.

A.B., at , on , did unlawfully conspire with C.D. to commit an indictable offence, to wit, the crime of (*describe the crime, with particulars in the form given for the alleged crime*).

Counterfeiting Postage or Revenue Stamps.

Code 479.

A.B., at _____, on _____, did unlawfully and fraudulently counterfeit (*or knowingly sell; or expose for sale; or utter*) a stamp used for the purposes of revenue by the Government of Canada (*or of the Government of the Province of Ontario*), to wit, a two-cent postage stamp of the Dominion of Canada (*or as the case may be*).

Damage.

Wilful. See "Wilful Injuries."

Dead Human Body.

Neglecting to Bury: Code 237(a).

A.B., on _____, at _____, did unlawfully and without lawful excuse neglect to perform a duty imposed upon him by law with reference to a dead human body, to wit (to bury the dead body of his infant child, *or as the case may be*).

OR

See Code 237(b) as to other misconduct.

Disorderly House.

Keeping: Code 225, 226, 227, 228, 232, 986.

A.B., at _____, on _____, and on divers other days and times since that date did unlawfully keep and maintain a disorderly house, to wit, a common bawdy (*or a common gaming, or betting*) house at (*describe locality, e.g. at a house known as No. 1 on _____ street in the city of _____*).

Drug.

Administering to Procure Abortion. See Abortion.

Drugging with Intent

To Commit Indictable Offence: Code 276(b).

A.B., at _____, on _____, with intent thereby to enable the said A.B. (or one, C.D.) to (*state the indictable offence committed or attempted*), to one E.F., did unlawfully apply (or administer, or attempt to apply or administer) to (or cause to be taken by) the said E.F. chloroform (or laudanum or a stupefying or overpowering drug, matter or thing, *stating what it was*).

To Endanger Life: Code 277.

A.B., at _____, on _____, A.D. 19____, did unlawfully administer (or cause to be administered) to (or cause to be taken by) C.D., a poison (or a destructive or noxious thing) namely (*state what it was*), so as thereby to inflict upon the said C.D. grievous bodily harm (or endanger the life of the said C.D.).

With Intent to Injure: Code 278.

A.B., at _____, on _____, A.D. 19____, did unlawfully administer (or cause to be administered to, or to be taken by) C.D., a poison (or a destructive or noxious thing) namely (*state what it was*), with intent thereby to injure (or to aggrieve, or to annoy) the said C.D.

Duel.

Challenging: Code 101.

A.B., at _____, on _____, did unlawfully challenge C.D. to fight a duel (or did unlawfully endeavour to provoke C.D. to challenge E.F., to fight a duel; or endeavour to provoke E.F. to challenge G.H. to fight a duel).

Election Documents.

Offences Respecting: Code 528.

For Form see Wilful Injury to Election Documents.

Election Offences.

R.S.C. ch. 6, *secs.* 255, 256, 260, 262, 264, 265, 269, 274.

Escapes and Rescues.

Breaking Prison: Code 187.

A.B., at _____, on _____, by force (*or* violence) did unlawfully break a prison, to wit, the common gaol of the county of _____, with intent to set at liberty himself, the said A.B. (*or* one, C.D.), he, the said A.B. (*or* C.D.), then being a person confined in the said prison on a criminal charge, to wit (*state the charge*).

Break Prison, Attempt to: Code 188.

A.B., at _____, on _____, then being a prisoner confined in the common gaol or prison at _____ on a criminal charge, did unlawfully attempt to break the said prison (*or* forcibly break out of his cell in the said prison, *or* make a breach in his cell in the said prison) with intent to escape therefrom.

Escape From Custody, Either Before or After Conviction: Code 189, 190.

A.B., at _____, on _____, having theretofore, to wit, on the _____ day of _____, A.D. 19____, been lawfully convicted of the offence (*state the offence*), and being on the day and at the place first above mentioned, in lawful custody under such conviction, to wit, in the common gaol in the county of _____ (*or* in charge of a peace officer by whom he was then lawfully being conveyed to prison, *or as the case may be*), under a lawful warrant issued upon such conviction, did unlawfully escape from such custody.

Rescue or Assisting: Code 191.

A.B., at _____, on _____, did unlawfully rescue C.D. (*or* assist C.D. in escaping, *or* attempting to escape from lawful cus-

today under sentence of (*state the sentence*) upon a criminal charge, to wit (*describe the crime*).

Constable Voluntarily Allowing Escape: Code 191, 192(b).

A.B., at , on , then being a peace officer, and having one C.D. in his lawful custody as such (*or he then being an officer of a prison, to wit, the keeper or a guard, or turnkey of a prison, to wit, the common gaol of the county of , in which C.D. was then and there lawfully confined*), under sentence of (*state the sentence*) upon a criminal charge of (*state the charge*), he, the said A.B., did then and there unlawfully and voluntarily and intentionally permit the said C.D. to escape.

Peace Officer Permitting Escape by Neglect of Duty: Code 193.

A.B., at , on , being a peace officer, and as such having then and there in his lawful custody one C.D., on a criminal charge, to wit (*state the charge*), did unlawfully, and by failing to perform a legal duty then imposed upon him, the said A.B., in the premises, to wit, by (*state the neglect or failure of duty of the officer*) permit the said C.D. to escape from such custody.

Aiding Escape From Prison: Code 194.

A.B., at , on , unlawfully and with intent to facilitate the escape of C.D., a prisoner lawfully imprisoned in the common gaol of the county of , did convey (*or cause to be conveyed*), a certain (*state the article*) into the said prison.

Convict Being at Large Before Expiration of Sentence: Code 185.

A.B., at , on , having been theretofore sentenced to imprisonment upon a criminal charge, to wit (*state the charge*), afterwards at the time and place aforesaid, and before the expiration of the term for which he was so sentenced, was at large without a lawful excuse.

Explosives.*Unlawfully Making or Possessing: Code 114.*

A.B., at _____, on _____, did unlawfully make (or unlawfully and knowingly have in his possession, or under his control), an explosive substance, namely (*describe or name it*), under such circumstances as to give rise to a reasonable suspicion that he was not making (or that he had not in his possession or under his control) the said explosive substance for a lawful object, which circumstances were as follows: (*state them*).

Explosion.*Causing Dangerous: Code 111.*

A.B., at _____, on _____, by an explosive substance, namely (*name or describe it*), unlawfully and wilfully caused an explosion (*state the locality and particulars*), of a nature likely to endanger life (or to cause serious injury to property).

Doing any Act (or Conspiring) to Cause: Code 113(a).

A.B., on _____, at _____, unlawfully and wilfully conspired with C.D. to cause by an explosive substance, to wit (*name it*), an explosion likely to endanger life (or to cause serious injury to property, *describe the locality and give particulars*).

Having Explosive With Intent: Code 113(b).

A.B., at _____, on _____, unlawfully and wilfully made (or had in his possession or under his control) an explosive substance, to wit, (*name it*) with intent by means thereof to endanger human life (or to cause serious injury to property, or to enable C.D., or some person unknown by means thereof to endanger human life, or to cause serious injury to property).

No further proceedings are to be taken for an offence under Code 113 until the consent of the Attorney-General has been ob-

tained, except such as necessary for the arrest and detention of the offender: Code 594.

Using Explosive With Intent: Code 112.

Did unlawfully place (or throw) an explosive substance into (or near) a building (or ship describing the same) with intent to destroy (or damage) certain machinery or working tools therein.

Attempt to Cause Bodily Injury By: Code 279.

A.B., on _____, at _____, by the explosion of a certain explosive substance, to wit (*name it*), unlawfully did burn (or maim, or disfigure, or disable, or do grievous bodily harm) to C.D.

Attempts to Injure, etc., by: Code 280(a)(i).

A.B., on _____, at _____, unlawfully and with intent thereby to burn (or maim or disfigure, or disable, or to do grievous bodily harm to) C.D. (or to certain persons being therein) did cause a certain explosive substance, to wit (*name it*) to explode.

or Code 280(a)(ii) substitute the following.

send or deliver to (or cause to be taken by, or received by) C.D. an explosive substance (or a dangerous or noxious thing), to wit (*name it*).

or Code 280(a)(iii).

put or lay (*name the place; as on the sidewalk upon the public street in, etc.*), or did cast or throw at (or apply to) C.D. a corrosive fluid or a dangerous or explosive substance, to wit (*name it*).

or Code 248(b).

Did unlawfully and with intent to do bodily injury to C.D. (or to certain persons then being therein) throw in or upon or

against or near a certain building or shop or vessel (*describing it*) an explosive substance, to wit (*name it*).

Extortion.

Demand With Menaces: Code 452.

A.B., on _____, at _____, did unlawfully with menaces (*state what*) demand from C.D. a sum of money, to wit, the sum of five dollars (*or one horse, or as the case may be*) the property of the said C.D. with intent to steal it.

By Accusing of Crime: Code 453, 454.

A.B., at _____, on _____, did unlawfully accuse (*or threaten to accuse*) C.D. (*or one E.F.*) of the offence of having (*state any of the offences mentioned or referred to in Code 453, 454*) with intent thereby to extort (*or gain*) money (*or anything, stating what*) from the said C.D., or whereby the said A.B. compelled (*or attempted to compel*) the said C.D. (*or one E.F., or any one*) to (*do any of the things mentioned in the last clause of Code secs. 453, 454, stating what*).

By Defamatory Libel: Code 332.

A.B., at _____, on _____, did unlawfully publish (*or threaten C.D. to publish, or offered to C.D. to abstain from publishing, or offered C.D. to prevent the publishing of a defamatory libel with intent to extort money from the said C.D. (or from E.F.), or with intent to induce C.D., (or E.F.) to confer upon the said A.B. (or upon one G.H.) an office of profit.*

By Threatening Letter: Code 451, 453(c).

At _____, on _____, A.B. did unlawfully send or deliver to (*or cause to be received by*) C.D. a certain letter (*or writing*) demanding of the said C.D. with menaces, a certain sum of

money, to wit (*state what*) the said demand being without reasonable or probable cause, and he, the said A.B., then well knowing the contents of the said letter (*or writing*).

False Return by Official of Penny Savings Bank.

R.S.C. ch. 31, secs. 41, 42.

False Warehouse Receipts.

Code 425, 427(a).

A.B., on _____, at _____, being the keeper (*or a clerk or a person in the employ of C.D. the keeper*) of a warehouse (*or a miller, or master of a vessel, or a wharfinger, or a keeper of a yard for storing lumber, or any of the places mentioned in Code 425*) did unlawfully and knowingly and wilfully give to C.D. a writing purporting to be a receipt for certain goods or property, to wit, 5,000 bushels of grain (*or 100,000 feet of lumber, or as the case may be*) as having been received into his said warehouse (*or place mentioned*) before the said goods or property mentioned in the said receipt had been actually received by him as aforesaid(with intent to mislead (*or deceive, or defraud*) the _____ of _____ (*or E.F., or some person then unknown*).

Fraudulently Alienating Property Covered by Warehouse Receipt.

Code 427(b).

False Entry in Government Book, etc.

Code 484.

A.B., at _____, on _____, he then being an official of the Provincial Government of Ontario (*or a clerk in the bank of as the case may be*) did unlawfully and with intent to defraud make an untrue entry or an alteration in (*or did wilfully falsify*) a certain book of account kept by the Government of the Pro-

vince of Ontario (or by the said bank for the Government of the Province of Ontario) in which book were kept the accounts of the owners of certain stock (or a certain annuity or public fund, describing it) transferable in such book, by (stating in what the false entry or alteration consisted).

False Ticket, Obtaining Passage by.

Code 412.

A.B., on , at , by means of a false ticket purporting to have been issued by the Railway Co., did fraudulently and unlawfully obtain (or attempt to obtain) passage on a railway train.

(Similar charges in respect to steamboat.)

Falsifying Book, etc., by Official.

Code 413.

A.B., on , at , he then being a director (or manager) of a body corporate called the bank (or as the case may be) did unlawfully and with intent to defraud, falsify (or destroy, or alter, or mutilate) a certain book (or writing, or valuable security) belonging to the said bank (or make a false entry, or concur in making or omitting to enter material particulars in a certain book, set out what the book was, and what the false entries consist of, or what entries were omitted).

False Return by Public Official.

Code 416.

A.B., at , on , he then being (state official position, e.g., collector of the said of ,) entrusted with the receipt (or custody or management) of a part of the public revenues (state what) did unlawfully and knowingly furnish to the (Town Treasurer of the said town of , or as the case may

be) a false statement (or return) of the money collected by him (or entrusted to his care, or under his control).

False Pretences, Obtaining Money, etc., By.

Code 404, 405.

A.B., on _____, at _____, did unlawfully and * with intent to defraud obtain a sum of money, to wit, \$ _____ (or any article or property, stating what) by false pretences, to wit, by the false pretence that he, the said A.B., was the owner of property to the actual value of \$ _____ over and above all claims against it (or as the case may be, stating the false pretence, which must be of some alleged existing fact).

or Code 406.

*With intent to defraud (or to injure) C.D. thereby did induce the said C.D. to execute (or make, or endorse, as the case may be) a promissory note (or other valuable security, stating it) by false pretences, to wit, that (set-out the particulars of the false pretences).

Falsely Pretending to Enclose Money in a Letter.

Code 407.

A.B., on _____, at _____, did wrongfully and with wilful falsehood, pretend or allege that he, the said A.B., did enclose and send (or cause to be enclosed and sent), in a post letter, a sum of money, to wit (ten dollars, or as the case may be), or a valuable security, to wit (state what), or a chattel, to wit (state what), to one C.D., which sum of money (or as the case may be) he did not in fact so enclose and send (or cause to be enclosed and sent) in the said letter.

False Telegram.

Sending in False Name: Code 475.

A.B., at _____, on _____, with intent on the part of the said A.B. to defraud the C.D., unlawfully caused or procured a

telegram to the effect (*state its purport*), to be sent, or delivered, to the said C.D., as being sent by the authority of one E.F., he, the said A.B., then knowing that the said telegram was not sent by the authority aforesaid with intent on the part of the said A.B. that the said telegram should be acted upon as being sent by the authority of the said E.F.

Telegram or letter Containing False Matter: Code 476.

A.B., on , at , with intent on his part to injure (or to alarm) C.D., did unlawfully send (or cause or procure to be sent) a telegram (or a letter or other message, stating by what means) containing matter which he then knew to be false, to wit (*state the matter of the telegram or letter*).

Food, Selling Things Unfit for.

Code 224.

A.B., on , at , did, unlawfully, knowingly and wilfully expose for sale (or have in his possession with intent to sell) for human food a certain article, to wit (*name it*), which he, the said A.B., then knew to be unfit for human food by reason (*state why unfit*).

See, also, The Adulteration Act: R.S.C. ch. 133.

The Inspection and Sales Act: R.S.C. ch. 85.

The Canned Goods Act: R.S.C. ch. 134.

The Animals Contagious Diseases Act: R.S.C. ch. 75, sec. 38.

The Ontario Public Health Act: R.S.O. ch. 248, secs. 108, 109.

Also *Synopsis of Summary Convictions Cases Under "Food," post.*

Forcible Entry.

Code 102(1), 103.

A.B., at _____, on _____, did unlawfully and forcibly and in a manner likely to cause a breach of the peace, or in a manner likely to cause reasonable apprehension of a breach of the peace, to wit (*set out the force or violence used*), enter on land, to wit (*describe it*), which was then in the actual and peaceable possession of C.D.

Forcible Detainer.

Code 102(2), 103.

A.B., at _____, on _____, was in actual possession without colour of right of certain land being (*describe it*), did unlawfully detain it in a manner likely to cause a breach of the peace, or reasonable apprehension of the same, from C.D., who was entitled by law to the possession of it, by (*describe the violence used*).

Forgery.

Code 466-470.

A.B., at _____, on _____, did unlawfully and knowingly commit forgery of a certain document, that is to say (*describe the document as mentioned in sub-sections of Code 468*).

Forged Bank Notes, Possessing.

Code 550.

A.B., at _____, on _____, did unlawfully and without lawful authority or excuse purchase (*or receive*) from C.D. (*or have in his possession or custody*) a forged bank note, to wit (*describe it*), or a forged blank bank note (*describe it*), he the said A.B. then well knowing the same to be forged.

Forged Documents, Uttering.

Code 467.

A B., at _____, on _____, then knowing a certain document, to wit (*describe it*), to be forged, did unlawfully use, or deal with, or act upon it (*or did cause, or did attempt to cause, one C.D., to use, or deal with, or act upon it*), as if it were genuine, by (*state how it was used or attempted to be used*).

Forgery of Depositor's Book in Post Office Savings Bank.

R.S.C. ch. 30, sec. 18. See other offences: Code 466-494.

Forgery of Election Documents.

R.S.C. ch. 6, sec. 255.

Fortune Telling.

Code 443.

A.B., at _____, on _____, did unlawfully * pretend to exercise certain witchcraft (*or sorcery or conjuration, etc.*).

or

*Undertake to tell fortunes.

or

*Pretend from his skill or knowledge in an occult and crafty science, to wit (*describe*), to discover where, or in what manner certain goods or chattels, to wit (*state what*) supposed to have been stolen from C.D. (*or lost by C.D.*) might be found.

Fraud on Creditors.*Trader Failing to Keep Proper Books:* Code 417(c).

A.B., being a trader at _____, and then indebted to an amount exceeding in all \$1,000 and being on the _____ day of _____, 190 _____, and still being unable to pay his creditors in full, did not for five years next before such inability and while he

continued to be a trader as aforesaid keep such books of account as according to the usual course of the business in which he was engaged as were necessary to exhibit and explain his transactions.

Code 417(a)(i).

A.B., at , on , with intent to defraud his creditors (or C.D., one of his creditors) to whom he was then lawfully indebted in a certain sum of money, did unlawfully, to wit, on the said day of 19 , make a certain conveyance (or assignment, or transfer, or delivery) of his property, consisting of (*describe it*) to E.F.

or (a)(ii).

Unlawfully remove a part of his property, to wit (*state the articles removed*), from his store in the said of (or conceal, or dispose of a part of his property, to wit, *state the articles, and in what manner they were concealed or disposed of*).

or (b).

A.B., at , on , with the intent on the part of the said A.B. that one C.D. should defraud the creditors (or one E.F., one of the creditors) of the said A.B., did unlawfully receive from the said A.B., certain property of the said A.B., to wit (*state what*).

Destroying or Falsifying Books; or Making False Entries:
Code 418.

A.B., at , on , with intent to defraud his creditors did unlawfully destroy (*or deal with in any of the ways mentioned, stating how*), a certain book of account of the said A.B. (or a certain writing or security, to wit, *state what, e.g., a certain promissory note theretofore made by one E.F. to and then held by the said C.D. and unpaid*) or made, or was privy to the making of a false and fraudulent entry in a book of account kept by the said A.B., whereby it appeared that a certain debt

then due by G.H. to the said A.B. had been theretofore paid, whereas in truth and in fact the said debt had not been paid, but was then still owing and due to him, the said A.B.

Fraudulent Concealment of, Incumbrance, etc.

By Mortgagor, or Seller of Land, or Chattel: Code 419.

A.B., at _____, on _____, then being the seller (or mortgagor) of a certain parcel of land (or chattel, *describing it*) to one C.D. (or then being the solicitor or agent of one A.B., the seller (*etc., as above*), and having been served on behalf of the said C.D., as such purchaser or mortgagee, with a written demand of an abstract of title of the said land (or chattel) before the completion of the said purchase or mortgage by the said C.D., did unlawfully and with intent to defraud and in order to induce the said C.D. to accept the title offered to him, conceal a deed or incumbrance (or other instrument, *naming it*) material to the title (*state what the instrument was and shew its materiality, e.g.*) a vendor's lien on the said chattel in favour of one G.H., under a written instrument signed by the said A.B., whereby the said G.H. had, at the time of the completion of the said purchase (or mortgage), and still has, a lien upon the said chattels for the price thereof on the sale of the same by him to the said A.B.

Fruit Trees, Diseases of.

San Jose Scale; Importation of Trees Infected With: R.S.C.
ch. 127, secs. 2, 3.

Furious Driving, Injury by.

Code 285.

A.B., on _____, at _____, being in charge of a certain vehicle, to wit, a four-wheeled cab (or *as the case may be*), did then and there by his wanton and furious driving (or racing)

of and with the said vehicle unlawfully do (*or cause to be done*) bodily harm to C.D. (*give particulars*).

Fire, Illegal Use of.

Arson: Code 511, 541.

At _____, on _____, A.B., unlawfully, wilfully, without legal justification or excuse, and without colour of right, did set fire to a certain building, to wit, a dwelling-house (*or to a certain stack of vegetable produce, called hay; or mineral fuel called coal; or to a mine known as naming it; or to a well of oil; or to a ship or vessel called name; or to certain timber describing it belonging to C.D.*

or

At _____, on _____, A.B., unlawfully, wilfully, without legal justification or excuse, without colour of right, and with intent to defraud, did set fire to a certain building, to wit, a store belonging to him the said A.B.

Threatening to Burn, etc.: Code 516.

A.B., at _____, on _____, did unlawfully send (*or state as in Code 516*) to C.D. a letter (*or writing*) threatening to burn (*or destroy*) a certain building (*or other thing mentioned, describing it*), (*or certain grain, or hay, or straw, or certain agricultural produce, stating what it was, in or under a certain building, or in a certain ship, describe the building or ship*).

Attempt to Set Fire to Crops, Forest, etc.: Code 514.

A.B., at _____, on _____, did unlawfully, wilfully and without legal justification or excuse and without colour of right * attempt to set fire to certain (*state what*) to wit (*describe*), the same being the property of C.D.

or

*Set fire to (*state what, e.g., a quantity of wood and brush*)

which was then so situated that he, the said A.B. then knew that a certain crop belonging to C.D. then growing on adjacent land (*or any of the things stated in Code 513, stating what*) was likely to catch fire therefrom.

Forest, Reckless Setting Fire to: Code 515.

A.B., at _____, on _____, did unlawfully by such negligence as shewed him to be reckless or wantonly regardless of consequences (*describing how*) set fire to the forest *or* to certain manufactured lumber, *or* to square timber, *or* logs then being on the Crown domain, *or* then being on land leased or lawfully held by C.D. for the purpose of cutting timber; *or* on the private property of C.D. on (*here state one of the places mentioned in the above section*) so that the same was then and thereby injured (*or* destroyed).

Setting Fire to Crop, etc.: Code 513(a), 541.

A.B., at _____, on _____, unlawfully, wilfully and without legal justification or excuse and without colour of right, did set fire to (*here state any of the things mentioned in Code 513(a)*) the same being the property of C.D.

or Code 513(b).

A.B., at _____, on _____, unlawfully and wilfully did set fire to a tree (*or any of the things mentioned in Code 513(b), describing the same*) and did thereby injure (*or* destroy) the said (*describe the thing injured*).

Forest, etc., Setting Fire to.

See Fire.

Gambling.

On Public Conveyances: Code 234.

A.B., on _____, at _____, in a railway car on the Grand Trunk Railway (*or* in a steamboat called _____), then being

used as a public conveyance for passengers did unlawfully by means of a game of cards (or dice, or by any instrument or device of gambling, describing it) obtain from C.D. (or attempt to obtain from C.D. by actually engaging the said C.D. in such game) a sum of money (or any other valuable security or property, naming it).

Poolselling or Betting: Code 235, 987.

A.B., on , at , did unlawfully use (or knowingly allow to be used) certain premises under his control being (describe) for the purpose of recording or registering any bet (or wager or selling pools upon the result of a horse race at ; or did unlawfully become custodian or repository of a sum of money (or state any valuable thing) staked upon the result of a horse race at .

Lottery or Raffle: Code 236 (a).

A.B. at , on , did unlawfully advertise a proposal or plan for disposing of certain property, to wit (describe) by lots (or any mode of chance, describing it).

III

Sell a certain lot (or card, or other device, stating it) for disposing of property, to wit (describe) by lots (or describe the mode of chance adopted).

or

Conduct a certain scheme (describing it) for the purpose of determining the holders of what tickets (or numbers, etc.) are the winners of a certain property (describing it) disposed of by lot (or chance, describing how).

Buying Lottery Tickets: Code 236(2).

Gambling in Stocks or Merchandise: Code 231. See Bucket Shop.

Frequenting Place Where Above Carried On: Code 233.
See Bucket Shop.

Gaming House, Keeping Common: Code 226-228, 985, 986.

Betting House, Keeping Common: Code 227, 228, 985, 986.

A.B. on , at , did unlawfully keep a disorderly house, to wit, a common gaming house (or common betting house).

See also Gaming House, in Summary Convictions Cases.

Garrotting or Gagging.

Code 276(a).

At , on , A.B., with intent thereby to enable him, the said A.B. (or one C.D.) to rob (or commit a rape upon) E.F. unlawfully did attempt to render the said E.F. insensible (or unconscious, or incapable of resistance) by gagging (or garrotting) or (mention the means used) the said E.F. in a manner calculated to choke (or suffocate, or strangle) the said E.F., or to render the said E.F. insensible, unconscious or incapable of resistance.

Grain and Produce, Receipts, False.

See False Warehouse Receipts.

House Breaking.

See Burglary.

Indecent or Scurrilous Books, Letters, etc.

Posting: Code 209.

A.B., at , on , did unlawfully post for transmission, or delivery by or through the post to one C.D., an ob-

scene or immoral book (or any of the things mentioned) of an indecent or immoral or scurrilous character.

or

A letter or an envelope addressed to one C.D., upon the outside of which letter or envelope (or a post card, or a post band or wrapper upon which) there then were words or devices or matter of an indecent or immoral or scurrilous character.

A letter or a circular concerning a certain scheme devised (or intended) by the said A.B. to deceive and defraud the public (or for the purpose of obtaining money from the said C.D. under false pretences, to wit, state what the device or scheme was).

Incest.

Code 204.

A.B., and one C.D., at , on or about , and at divers times since that date, being brother and sister (or parent and child; or grandparent and grandchild) did unlawfully have sexual intercourse with each other, the said A.B., being then aware of their consanguinity and did thereby commit incest.

Indecency, Gross.

Code 206.

A.B., etc., a male person, did unlawfully commit an act of gross indecency with C.D., another male person.

Indecent and Obscene Picture, Selling or Exposing.

Code 207.

A.B., etc., in a certain open and public place did unlawfully, knowingly and without lawful justification or excuse manufacture (or sell, or expose for sale, or expose to public view) an obscene picture (or book called , or photograph, or model) representing (describe it) and having a tendency to corrupt morals.

Inland Revenue Act, Breaches of.

R.S.C. ch. 51.

Distiller, Offences By: Secs. 180, et seq.

Compounder, Offences By: Secs. 187, et seq.

Brewer, Offences By: Sec. 197.

Malster, Offences By: Sec. 208, et seq.

Bonded Manufacturer, Offences By: Sec. 246, et seq.

Tobacco and Cigar Manufacturer, Offences By: Sec. 269, et seq.

Jurymen, Attempting to Corrupt.

Code 180. *See* Bribery.

Kidnapping.

Code 297.

A.B., on _____, at _____, did, without lawful authority, kidnap C.D., with the intent to cause the said C.D., against his will, to be secretly confined or imprisoned in Canada, or to be unlawfully sent (or transported) against his will, out of Canada, or to be sold or captured as a slave (or held to service against his will); or that A.B., on _____, at _____, did, without lawful authority, seize and confine (or imprison) C.D. within Canada.

Landlord and Tenant.

See Tenant.

Landmarks, Removing or Injuring.

Code 531, 532. Also R.S.C. ch. 55, secs. 222-224.

Larceny: Merged in Theft.

See Theft.

Letter: unlawful Dealing with Post Letter.

See Post Office Offences.

Letter, Sending False.

See False Telegram, etc.: Code 476.

Libel

Blasphemous: Code 198.

A.B., on _____, at _____, unlawfully did publish in a certain newspaper (or book or as the case may be) a certain blasphemous and profane libel of and concerning the Christian religion in the following words (*here set out libellous words*).

Libel: Code 334.

A.B., on _____, at _____, unlawfully did publish of and concerning C.D. a defamatory libel in a certain letter directed to E.F. (or in a newspaper called _____, or state how otherwise published) in the words following, that is to say (*set out the words*), thereby imputing that the said C.D. (*state what was the meaning of the libel*) he, the said A.B., then knowing the said libel to be false.

Lodger or Tenant, Theft by.

Code 360. See Theft by Tenant, etc.

Lottery.

See Gambling.

Lying in Wait Near Public Meeting.

Code 128. See Assault.

Mail, Offences Against.

See Post Office Offences.

Manslaughter.

Code 261, 250-260.

A.B., at _____, on _____, did unlawfully kill and slay C.D.

Maiming.

See Wounding.

Marriage.

Solemnizing Without Authority: Code 311(a).

A.B., at _____, on _____, without lawful authority, did unlawfully solemnize (or pretend to solemnize) a marriage between C.D. and E.F.

or Code 311(b).

A.B., at _____, on _____, then knowing that C.D. was not lawfully authorized to solemnize a marriage between E.F. and G.H. did unlawfully procure the said C.D. to unlawfully solemnize a marriage between the said E.F. and G.H.

Solemnizing Contrary to Law: Code 312.

A.B., at _____, on _____, a clergyman of (*state what denomination*), having lawful authority to solemnize marriages, did, then and there, a marriage between C.D., a man, and E.F., a woman, solemnize unlawfully, wilfully and knowingly in violation of the laws of the Province of Ontario in which the said marriage was so solemnized, to wit, by solemnizing the same without due publication of banns and without any license in that behalf (*or, set out particular illegality complained of*) as required by the laws of the said Province of Ontario.

Feigned: Code 309.

A.B., at , on , a man, did unlawfully procure a feigned and pretended marriage to be performed between himself and C.D., a woman.

(*Assisting in same*) unlawfully assist E.F. in procuring a feigned and pretended marriage between the said E.F., a man, and C.D., a woman.

Marine Signals.***Wilfully Interfering With: Code 526.***

At , on , A.B. unlawfully, wilfully, did alter (*or remove, or conceal, stating particulars*) a certain signal (*or mark; or buoy; describe it and where situated*) used for the purposes of navigation.

Or Buoy; Fastening Vessel to: Code 526(2)

At , on , A.B., unlawfully made fast a vessel or boat to a signal (*or buoy; describe where it was situated*) used for the purposes of navigation.

Mines, Frauds in Relation to.

Code 424. *See also Mines Act, 1906, in list of Summary Convictions Cases.*

Mines and Mining Machinery, Injuries to.

Code 520. *See Wilful Injuries.*

Murder.

Code 259, 260; also 250-263.

A.B. murdered C.D. at , on .

Attempt to: Code 264(a).

At , on , A.B. unlawfully did administer (or cause to be administered) to C.D. certain poison (or a certain destructive thing), to wit (*describe*) with intent, thereby, then and there, to murder the said C.D.

or Code 264(b).

Unlawfully did wound (or cause grievous bodily harm) to C.D. with intent, thereby, then and there, to murder the said C.D.

or Code 264(c).

Unlawfully did, with a certain loaded gun (or pistol, or revolver) shoot (or attempt to discharge a loaded arm) at C.D., with intent thereby, then and there, to murder the said C.D.

or Code 264(d).

Unlawfully did attempt to drown (or suffocate, or strangle) C.D. with intent, thereby, then and there, to murder the said C.D.

or Code 264(e).

Unlawfully did by the explosion of a certain explosive substance, to wit (*describe the explosive*) destroy (or damage) a certain building situate and being in (*place*) street, in (*state where*), aforesaid, with intent, thereby, then and there, to murder C.D.

or Code 264(f).

Unlawfully did set fire to a certain ship to wit (*state where*) with intent, thereby, then and there, to murder C.D.

or Code 264(g).

Unlawfully, did cast away (or destroy) a certain ship, to wit, , with intent, thereby, then and there, to murder C.D.

Attempt to by Any Means: Code 264(h).

By then and there (*describe what the attempt consisted of*) did unlawfully attempt to murder C.D.

Threats to: Code 265.

Unlawfully did send (*or deliver*), to (*or cause to be received by*) C.D. a certain letter (*or writing*) threatening to kill (*or murder*) the said C.D., he, the said A.B., then knowing the contents of the said letter (*or writing*).

OR

A.B., on , at , unlawfully did utter a certain writing threatening to kill (*or murder*) C.D., he, the said A.B., then knowing the contents of the said writing.

Conspiracy to: Code 266(a).

A.B., on , at , and C.D. did, with other parties unknown, unlawfully conspire and agree together to murder E.F. (*or to cause E.F. to be murdered*).

Counselling Murder: Code 266(b).

A.B., on , at , did unlawfully counsel (*or attempt to procure*) C.D. to murder E.F.

Accessory After the Fact to: Code 267.

That some person or persons, on , at , did unlawfully (*state the offence committed by the principal offender*), and that the said A.B. (*the informant*) has just cause to suspect, and does suspect, that C.D. did commit the said offence, and that E.F., at , on , well knowing the said C.D. to have committed the said offence, did afterwards, at the of in the county of , on the day of , A.D. 19 , unlawfully receive (*or comfort*) the said C.D. (*or assist the said C.D.*) in order to enable the said C.D. to escape.

Necessaries for Children, Parent, etc., Omitting to Supply.

Code 242, 244.

A.B., on at , and on and at divers other days and times before and since that date, he being then the father (*or*

the guardian) of C.D., a child under sixteen years of age, who was then and there a member of the said A.B.'s household, and the said A.B. being as such father (*or* guardian) under a legal duty and bound by law to provide sufficient food, clothing and lodging and all other necessities for the said C.D., his said child (*or* ward), did unlawfully and in disregard of his duty in that behalf refuse and neglect without lawful excuse to provide necessities, to wit, food (*or* clothing, *etc.*) for the said C.D. while a member of the said A.B.'s household aforesaid, by means whereof the life of the said C.D. was endangered (*or* the health of the said C.D. was likely to be permanently injured; *or* the death of the said C.D. was caused).

(A similar form may be used in the case of a husband neglecting to provide necessities for his wife): Code 242(2), or anyone having charge of another who is unable to provide for himself: Code 241; or master neglecting to supply necessities to apprentice: Code 243.

Negligence Causing Injuries.

Code 284.

A.B., at _____, on _____, being then and there the agent at the station of the _____ railway and having as such duly received orders to detain a certain freight train No. _____ on the said railway at the said station to allow a passenger train then proceeding in an opposite direction to pass at the said station did unlawfully, and negligently, omit to detain the said freight train, in consequence whereof the same proceeded without waiting for the said passenger train to pass as aforesaid, by means and as a result whereof a collision occurred between the said trains and the said A.B. by his said omission of duty did then and there unlawfully cause grievous bodily injury to C.D.

Charges similar to the above may be framed for doing negligently or negligently omitting to do any act which it was a per-

son's duty to do, thereby in any way causing grievous bodily harm to any one.

Negligently Causing Injury by Furious Driving.

Code 285.

A.B., at , on , he then and there having the charge of a certain vehicle did unlawfully and by wanton (or furious) driving (or racing, or by wilful misconduct, or wilful neglect, *stating in what the neglect or misconduct consisted*) did bodily harm (or cause bodily harm to be done) to C.D.

Nuisance, Common.

Code 222.

At , on , and on and at divers other days and times before and since that date, A.B., unlawfully and injuriously did and he does yet continue to (*set out the particular act or omission complained of*) and thereby unlawfully did commit and does continue to commit a common nuisance, which did then and there occasion injury to the person of C.D. (or endangered the lives, or safety, or health of the public).

Oath.

Administering Unauthorized: Code 179.

Administering an Unlawful: Code 130.

A.B., on , at , did unlawfully administer and cause to be administered to C.D. a certain oath and engagement purporting to bind the said C.D. not to inform or give evidence against any associate confederate or other person of or belonging to a certain unlawful association and confederacy; and which said oath and engagement was then and there taken by the said C.D.

Taking Unlawful: Code 130.

Commence as above—Did unlawfully take a certain oath and engagement purporting (*etc., as in the last form*).

Obscenity.

See Indecency.

Offensive Weapons.

See Weapons.

Oil Wells, Injuries to.

Code 520. *See* Wilful Injuries.

See Wilful Injuries.

Perjury.

Code 170-174.

A.B., at _____, on _____, did unlawfully commit perjury at the court of _____, on the trial of C.D. for _____, by swearing to the effect (*state in what the perjury consisted*) contrary to the truth.

Subornation: Code 170(2)-174.

(*Proceed as in the above form to the end and add*)—And that before the committing of the said perjury by the said A.B., to wit, on the _____ day of _____, at _____, E.F. did unlawfully counsel and procure the said A.B. to commit the said perjury.

False Statement in Affidavit: Code 172.

False Declaration: Code 176.

Personation at an Examination.

Code 409.

A.B., at _____, on _____, falsely and with intent to gain an advantage for himself (*or for one C.D.*) did personate E.F., a candidate at a competitive (*or qualifyi. g*) examination duly

8—SEAGER.

and lawfully held in connection with the University (*or college, or as the case may be*) of (*naming it*).

This case may also be tried by one justice summarily: see Summary Convictions Cases, post.

Personating an Owner of Stock.

Code 410.

A.B. did unlawfully, falsely and deceitfully personate C.D., who was then the owner of a certain share or interest in certain stock, to wit (*describe the stock*), then transferable at the bank (*or, at the head office of the* company) and did thereby then and there transfer (*or endeavour to transfer*) the share and interest of the said C.D. in the said stock as if he, the said A.B. were the lawful owner thereof.

Pickpockets.

See Theft from the Person.

Prison Breaking.

See Escape.

Promise of Marriage.

See Seduction.

Poisoning.

See Drugging.

Polygamy.

Code 310.

At , on , and at divers others days and times before and since that date A.B., a male person, and C.D. and E.F., females, unlawfully did practice (*or agree and consent to practice*) polygamy together.

or

Did unlawfully by mutual consent enter into a form of polygamy together.

Post Office Offences.

Theft of Post Letter Bag, Letter or Mail Matter: Code 364(a).

A.B., at , on , did unlawfully steal * one post letter bag, the property of the Postmaster-General of Canada;

or (b).

*A post letter addressed to E.F., from a post letter bag, or from the post office at ; or from C.D., a mail clerk on the Grand Trunk Railway, then and there employed in the business of distributing and delivering the mail; (or as the case may be);

or (c).

*A post letter the property of the Postmaster-General of Canada, which said letter contained a sum of money, or a valuable security, or chattel (stating what);

or (d).

*Certain money (or a certain valuable security, or chattel, (stating what) from or out of a post letter, the property of the Postmaster-General of Canada.

See Code 365, 366, for other offences.

Unlawfully Opening or Detaining Letter: R.S.C. ch. 66, sec. 121.

A.B., at , on , did unlawfully open (or did unlawfully and wilfully keep, or secrete, or delay, or detain, or cause to be opened, etc.) a post letter, to wit, a letter transmitted by post (or deposited in the post office of ; or in a letter box put up at under the authority of the Postmaster-General of Canada, and addressed to C.D.

Other Post Office Act, Offences Against: R.S.C. ch. 66, secs. 117-137.

Opening Letter Bag, etc.: Sec. 117.

Forging Postage Stamps: Sec. 119.

Forging Post Office Order: Sec. 120.

Enclosing Explosive Substance in Letter, etc.: Sec. 122.

Obstructing the Mail: Sec. 125.

Mail Carrier Drunk on Duty: Sec. 126.

Post Master Issuing Money Order Without First Receiving the Money: Sec. 129.

Postmaster, Other Offences By: Secs. 131-133.

Post Office Official Converting Property Mailed: Sec. 133.

Mail, Stopping the: Code 449.

At _____, on _____, A.B. unlawfully did stop a certain mail, to wit (on a railway or mail coach, stating what), the mail for the conveyance of letters between _____ and _____, with intent to rob (or search) the same.

NOTE

See Gambling.

Railway Passengers, Wilfully Endangering.

Code 282.

A.B., at _____, on _____, upon and across a certain railway there called (e.g., the Grand Trunk Railway), a certain piece of wood (or stone, or as the case may be) did unlawfully put (or throw) with intent thereby to injure or endanger the safety of persons travelling or being upon the said railway.

or

Upon a certain railway there called (*name it*) a certain rail (*or switch, or as the case may be*) there belonging to such railway, did unlawfully take up (*or remove, or displace; or injure or destroy the track, or bridge, or fence, of such railway*) with intent thereby to injure or endanger the safety of persons travelling or being upon the said railway.

or

A certain point (*or other machinery, stating what*) then belonging to a certain railway called (*name*), did unlawfully turn (*or move, or divert*), with intent thereby to injure or endanger the safety of persons travelling or being upon the said railway.

or

Unlawfully did make (*or shew, or hide, or remove*), a certain signal or light upon or near to a certain railway called (*name*), with intent thereby to injure or endanger the safety of persons travelling or being upon the said railway.

Unlawfully did throw (*or cause to fall, or strike*) at, or against (*or into, or upon*) an engine (*or tender, or carriage, or truck*), then being used and in motion upon a certain railway there called (*name*), a piece of wood (*or a stone, or other matter as the case may be, stating it*) with intent, thereby, to injure or endanger the safety of persons then and there being upon the said engine (*or tender, or carriage, or truck, or another engine, or tender, or carriage*) of the train of which the said first mentioned engine, tender, carriage or truck then formed part.

Railway, Wilful Neglect of Duty Causing Danger, etc.

Code 283.

A.B., on _____, at _____, he then and there being a switch tender on the _____ railway, by wilful omission and neglect of his duty as such, to wit, by wilfully omitting to replace a switch which it was his duty to have closed or replaced did thereby

unlawfully endanger the safety of persons being conveyed or being upon the said railway (*or set forth any other omission or neglect of duty by any employee of a railway*).

See also R.S.C. ch. 37, sec. 415.

Rape.

Code 298-299.

At _____, on _____, A.B., a man, did unlawfully have carnal knowledge of C.D., a woman, who was not his wife, without her consent (*or with her consent, which was there and then unlawfully extorted by threats, or fear of bodily harm, or which consent was there and then obtained by the said A.B. personating the husband of the said C.D., or by false and fraudulent representations as to the nature and quality of the act, that is to say (set out the representations).*

Attempt to Commit: Code 300.

At _____, on _____, A.B., a man, did unlawfully attempt to have carnal knowledge of C.D., a woman, who was not his wife, without her consent (*if with her consent obtained by fraud, add the allegations in the preceding form*).

Receiving or Retaining in Possession Stolen Goods.

Code 399, 993, 994.

A.B., at _____, on _____, did unlawfully receive, or retain in his possession (*state the article*), the property of C.D., and which had been theretofore obtained by the said C.D. (*or one E.F.*) by an offence punishable on indictment, to wit, by theft (*or other indictable offence, describing it*), the said A.B. then knowing the said _____, to have been obtained by the said E.F. by the said indictable offence.

Rescue.

See Escape, etc.

Robbery.

Code 447.

A.B., at _____, on _____, did unlawfully steal the moneys (or the goods and chattels, to wit, *state what*) of C.D. with violence (or threats of violence, *describing the threat*) to the person (or property) of the said C.D. such violence (or threats) being used to prevent resistance to the same being stolen and did thereby unlawfully commit robbery.

Robbery with Wounding or Violence; or by Two or More Persons; or When Armed: Code 446.

Rob, Assault with Intent to: Code 448.

A.B., at _____, on _____, did unlawfully assault C.D. with intent the moneys (or the goods and chattels, to wit, *describing what*) of him the said C.D. then and there did steal unlawfully and with violence (or with threats of violence, *stating what*) to the person (or property) of the said C.D. then and there used to prevent resistance to the same being so stolen, and did thereby unlawfully attempt to commit robbery.

Rewards, Corruptly Taking, for Procuring the Return of Property Which has been Stolen, etc.

Code 182.

A.B., at _____, on _____, did unlawfully and corruptly take from C.D. a sum of money, to wit (*state the amount*), (or a certain reward, *stating what*) for, and under the pretence (or upon account of) the said A.B., helping the said C.D. to recover certain money (or a certain chattel, or valuable security, or other property, *naming it*) which had theretofore been unlawfully stolen from the said C.D. (or *state the circumstances shewing that the property had been obtained from the owner by an indictable offence*), he, the said A.B., not having used all due diligence to cause the offender to be brought to trial for the said

offence of stealing (or as the case may be) the said money or chattel.

Riotous Destruction or Damage to Buildings.

Code 96.

A.B., (C.D. and E.F.) together with divers other persons, they all being then and there riotously and tumultuously assembled together, to the disturbance of the public peace, did unlawfully and with force demolish (or pull down, or begin to demolish or pull down, or injure, or damage) a certain building (or a certain erection used in farming land, or in carrying on a certain trade or manufacture, or in conducting the business of a certain mine, or a certain tender, or wagon way, or track for conveying minerals from a certain mine; *describing it*).

Inciting Indians to Riotous Acts.

Code 109.

A.B. did unlawfully induce (or incite, or stir up)* certain Indians (or half-breeds) belonging to the reservation at , to the number of three or more, then and there apparently acting in concert to make a certain request or demand of C.D., an agent or servant of the Government of Canada, in a riotous (or disorderly, or threatening manner, or in a manner calculated to cause a breach of the peace) by demanding (*describe the demand and threats*).

Search Warrants.

Code 629, 643.

The Forms 1 and 2 are to be filled in as exemplified by the following:—

Information for Search Warrant.

That on or about the day of , 19 , one bay horse about years old, with white nigh hind foot and a

white star in the forehead, the same being the personal property of C.D. (*or describe what the property was, so that it can be identified*) was unlawfully stolen by A.B. (*or by some person unknown*) and the complainant has just and reasonable cause to suspect and does suspect that the same is concealed in the barn (*or describe the place*) on the farm of A.B. (*or E.F.*) and the causes of such suspicion are as follows (*describe them, as, for instance, that the said A.B. was seen driving a horse of a similar description from the direction of (the place from which the horse was stolen) towards the place where the said A.B. resides and where the said barn is situated*).

or

That on , at , A.B. in his office where he was then carrying on a loan business did unlawfully (obtain from C.D. the sum of \$ by false pretences) and there was at that time in the said office certain books of account apparently kept by the said A.B. for recording his loan transactions there, and books of account appearing to be the same books above mentioned are still in the said office of the said A.B., at No on street, in the said of , and the complainant believes that entries in the said books will afford evidence as to the commission of the said offence (*explaining and stating facts to justify that belief*).

(A justice is not authorized to issue a search warrant unless the information sets forth the causes and grounds of suspicion, sufficient to satisfy him that there is reasonable ground for the suspicion that there is stolen property in the place indicated and described, or that there is something there which will afford evidence as to the commission of the offence claimed. *R. v. Kehr*, 11 Can. Cr. Cas. 52.)

See, also, ante p. 23, as to Search Warrants.

Seduction.

Inveigling a Woman into a House of Assignment, etc.: Code 216(b).

A.B. (*etc.*) did unlawfully inveigle or entice C.D., a woman (*or a girl*), to a house of ill fame (*or assignment*) for the purpose of illicit intercourse (*or prostitution*).

or Code 216(c).

Did procure (*or attempt to procure*) C.D. a woman (*or a girl*) to become a common prostitute.

or Code 216 (d) (e).

Did procure (*or attempt to procure*) C.D., a woman (*or a girl*), to leave Canada (*or to come to Canada from abroad*) with intent that she should become an inmate of a brothel elsewhere (*describing where*) (*or in Canada*).

or Code 216(i).

Did apply to (*or administer to, or cause to be taken by*) C.D., a woman (*or a girl*) a drug (*or intoxicating liquor*) with intent to stupefy or overpower the said C.D. so as to enable him, the said A.B. (*or one E.F.*) to have unlawful carnal connection with the said C.D.

For other offences see same section and sections 214, 215, 217, 218, 220.

Carnal Knowledge of Girl Under Fourteen: Code 301, 302.

A.B., at _____, on _____, did unlawfully and carnally know (*or attempt to carnally know*) C.D., a girl then under the age of fourteen years, she not being his wife.

Of Girl Between Fourteen and Sixteen: Code 211.

At _____, on _____, A.B. unlawfully did (*or attempted to*) seduce (*or have illicit connection with*) C.D., a girl of previously chaste character, then being of (*or above*) the age of fourteen years and under the age of sixteen years.

Under Promise of Marriage: Code 212.

At _____, on _____, A.B., being then above the age of twenty-one years did, then and there, unlawfully, and under promise of marriage, seduce and have illicit connection with C.D., she then being an unmarried female of previously chaste character and under the age of twenty-one years.

By Guardian of Ward: Code 213(a).

At _____, on _____, A.B., then being the guardian of C.D., a female, then and there did unlawfully seduce (or have illicit connection with) the said C.D., his ward.

Of Factory Employee: Code 213(b).

A.B. at _____, on _____, unlawfully did seduce (or did have illicit connection with) C.D., a woman of previously chaste character, and then being under the age of twenty-one years, and who was then in the employment of the said A.B. in his factory (or mill, or workshop, or shop, or store).

Carnally Knowing Idiot Woman, etc.: Code 219.

A.B., on _____, at _____, did unlawfully and carnally know (or attempt to have carnal knowledge of) C.D., a female idiot (or an imbecile, or an insane, or a deaf and dumb woman or girl) the said A.B. then well knowing that the said C.D. was an idiot (or imbecile, or insane, or deaf and dumb).

Ship, Sending Unseaworthy Ship to Sea.

Code 288, 289.

A.B. on _____, at _____, being the owner (or manager, or master) of a ship called (*name it*) which by reason of overloading (or being insufficiently manned, or other cause, *naming it*) was in such an unseaworthy state that the lives of the seamen (or passengers) on board the same were likely to be endangered

thereby did unlawfully send (*or* was a party to sending) the said ship on a voyage on the inland waters of Canada.

The consent of the Minister of Marine and Fisheries is necessary before prosecution for this offence: Code 595.

Ship-Wrecked Person, Preventing the Saving of.

Code 286(a).

A.B., on _____, at _____, unlawfully did prevent and impede (*or* endeavour to prevent and impede) C.D., a shipwrecked person, in his endeavour to save his life.

or Code 286(b).

Did without reasonable cause prevent or impede (*or* endeavour to prevent or impede) C.D. in his endeavour to save the life of E.F., a shipwrecked person.

Sodomy.

See Buggery.

Spring-guns or Man-traps, Setting.

Code 281.

A.B., on _____, at _____, unlawfully did set (*or* place, *or* cause to be set *or* placed) in a certain (*describe where set*) a certain spring-gun (*or* man-trap) which was calculated to destroy human life (*or* inflict grievous bodily harm) with intent that (*or* whereby) the same might destroy (*or* inflict grievous bodily harm upon) any trespasser (*or* person) coming in contact therewith.

Suicide.

Aiding and Abetting: Code 269.

A.B., on _____, at _____, and on divers other days before that date, unlawfully did counsel and procure C.D. to commit

suicide, in consequence of which counselling and procurement by the said A.B. the said C.D. then and there, actually did commit suicide.

Attempt to Commit: Code 270.

A.B., at _____, on _____, unlawfully did attempt to commit suicide by then and there endeavouring to kill himself.

Surveyor, Obstructing or Molesting while Surveying Dominion Lands.

R.S.C. 55, sec. 221.

Surveyors' Posts, or other Landmarks' etc., Removing, etc.

Secs. 222, 223.

Telegram, Sending False.

Code 475, 476. *See False Telegram.*

Tenant.

Wilful Injury to Property By: Code 529. See Wilful Injuries.

Theft By: Code 260. See Theft.

Theft.

From the Person: Code 379.

A.B., on _____, at _____, did unlawfully steal a certain chattel or valuable security, or a certain sum of money (*describing what was stolen*) from the person of C.D.

By Agents, Trustees, etc.: Code 355.

A.B., at _____, on _____, having theretofore received from C.D., a sum of money (*state amount*), or a certain (*state what, e.g., 500 bushels of wheat*), on terms requiring him, the said A.B.,

to account for, *or* pay over, the said money (*or* the proceeds of the said wheat) to one E.F. (*or* to the said C.D.), he, the said A.B., did afterwards, to wit, at the time and place aforesaid, unlawfully and fraudulently convert the said money (*or* the proceeds of the said wheat) to his own use, *or* did unlawfully and fraudulently omit to account for, *or* pay over the said money (*or* the proceeds of the said wheat) to the said E.F. (*or* to the said C.D.).

By Bank Employee: Code 359(b).

A.B., at _____, on _____, being there and then employed as cashier (*or* other officer, named in above section of the Cr. Code, stating what) of the Bank of (name), did unlawfully steal a sum of money, to wit (amount), *or* a certain bond (*or* bill, *or* note, *or* as the case may be, describing one of the things mentioned in the above sections) of the said bank; *or* a bond (*or* note, *or* state what) belonging to one C.D., which was there and then deposited or lodged with the said bank of (name).

By Clerks and Servants: Code 359(a)(b).

A.B., on _____, at _____, being then and there employed in the capacity of a clerk to C.D. did unlawfully steal (*state what*) belonging to (*or* then and there in the possession of) the said C.D.

By Tenants or Lodgers: Code 360.

A.B., on _____, at _____, did unlawfully steal a certain chattel (*or* fixture), to wit (*state what*) which had theretofore been let by C.D., the owner thereof, to be used by the said A.B. in, *or* with a house, *or* lodging, namely (*describe it*).

By Government Employee: Code 359(c).

At _____, on _____, A.B. being then and there employed in the service of His Majesty (*or* the Government of Canada, *or*

the Government of the Province of Ontario, or the municipality of), and being, then and there, by virtue of his said employment in possession of certain moneys (or certain valuable securities, to wit (*describe*), did unlawfully steal the said moneys (or the said valuable securities).

By Post Office Employee: R.S.C. ch. 30, secs. 19, 20, 41.

See also Post Office Offences, Thefts, etc., ante.

By Partner, in Mining Adventure: Code 353.

A.B. and C.D., being then and there co-partners (or co-adventurers) in a mining claim (*describe it, or in a share, or interest in a mining claim, describing it*), the said A.B. on or about , at , secretly kept back and concealed certain gold (or silver) found in or upon (or taken from) such claim.

By Husband or Wife: Code 354.

A.B., then being the wife of C.D., they then living apart from each other, did unlawfully steal (*describe the property stolen*) the same being the personal property of the said C.D.

By Owner: Code 352.

A.B., at , on , was the owner of a certain portable steam engine and had theretofore delivered the same to C.D., a machinist for repairs, which the said C.D. afterwards made thereto by means whereof the said C.D. then had a lien upon or a special interest in the said engine for the costs of such repairs and the said A.B. without the consent of the said C.D., and while the said engine was still in the actual possession of the said C.D., who was entitled to the said lien or special property therein did unlawfully and fraudulently take the said engine out of the possession of the said C.D. without paying said costs of said repairs, then due and owing to him, by the said A.B., and the said A.B. did thereby commit theft.

Of Stray Cattle: Code 392, 989.

A.B., on _____, at _____, unlawfully and without the consent of C.D., the owner of a certain steer which was found astray, did fraudulently take (or hold, or as the case may be, following the words of the statute) the said steer; or did fraudulently wholly (or partially) obliterate (or alter, or deface) a brand mark (or make a false brand mark) on the said steer; or did unlawfully and without reasonable excuse refuse to deliver up the said steer to the said C.D., or to E.F., who was then and there in charge thereof on behalf of the said C.D., or who was then authorized by the said C.D. to receive the said steer.

Killing any Living Animal with Intent to Steal: Code 350.

A.B., at _____, on _____, did unlawfully kill one (state what the animal was), the property of C.D., with intent to steal the hide (or the carcass, or a part of the carcass) thereof.

Stealing Anything in a Dwelling, of the Value of \$25 or With Menaces: Code 380(a).

A.B., on _____, at _____, in a certain dwelling-house of C.D., then and there situated, did unlawfully steal certain goods and chattels of C.D., to wit (describe), * the said goods then being of the value of \$25 at least.

or 380(b).

*And the said A.B., then and there, by menace or threat, to wit, state it, e.g., by pointing a pistol at, and threatening to shoot one E.F., then lawfully being in the said dwelling-house, did put the said E.F. in bodily fear).

From Ships, Wharves, etc.: Code 382.

A.B., at _____, on _____, did unlawfully steal certain goods or merchandise, to wit (state what), in a vessel called the _____, in the harbour or port of _____, being the port of _____.

entry or discharge of said vessel; or from a certain dock or wharf adjacent to the port of(*etc., as above*).

On Railways: Code 384.

A.B., at , on , did unlawfully steal in or from the railway station of the Railway at (or from the engine, or tender, or passenger car, or freight car on the said railway (or as the case may be), a certain (state the article), the property of C.D., or of the Railway Company.

Of Goods Under Seizure: Code 349.

A.B., on , at , did unlawfully steal certain personal property, to wit (*describe it*), which was then and there under lawful seizure under an execution duly issued of (*name the court*) in a certain cause (*name it*).

NOTE.—This does not apply to things seized under landlord's distress warrant or under chattel mortgage.

From a Wreck: Code 383; Code 2(41).

A.B., at , on , did unlawfully steal (*describe the article*), which was then and there a portion of the cargo of (or belonging to, or as the case may be) a certain vessel called (*name the ship*) which had been then and there sunk (or stranded) and wrecked.

Of Ore, etc., From a Mine: Code 378, 988.

A.B., at , on , unlawfully did steal a quantity of ore, the property of C.D., from a certain mine of the said C.D., situated in , aforesaid.

(*Similar form for theft of any of the things mentioned in Code 378.*)

By Pick Lock: Code 381.

A.B., at _____, on _____, unlawfully by means of a pick lock (or false key) did steal the sum of \$ _____ (or state any other property), the property of C.D. from a locked and secured receptacle.

Of Goods in Manufactories: Code 388.

A.B., at _____, on _____, unlawfully did steal (*describe the property*) belonging to C.D. in a certain _____ manufactory of the said C.D., there situated whilst the same was placed (or exposed) during a certain stage, process or progress of the manufacture thereof in or upon the premises of the said manufactory.

Of Domestic Animal, etc., (Over \$20 Value): Code 370.

A.B., at _____, on _____, did unlawfully steal one dog (or one goose, or three hens, or as the case may be), being a beast (or bird, or other animal) ordinarily kept for domestic purposes (or for profit, or ordinarily kept in confinement) the same being of the value of more than twenty dollars and being the property of C.D.

For same offence when property under \$20 in value, see Summary Conviction Cases.

Of Drift Timber, etc.: Code 394(a), 990.

A.B., at _____, on _____, without the consent of the owner thereof did unlawfully and fraudulently take (or hold, etc., using any of the words in the section referred to appropriate to the charge) certain timber (or sawlog, or other property mentioned), which was found adrift in (or cast ashore on the beach of Lake _____, or as the case may be) the same being the property of C.D.

(Similar forms for other offences under Code 394.)

Of Judicial Documents, etc.: Code 363.

A.B., on _____, at _____, did unlawfully steal a certain record (or writ, or other document, stating it) belonging to and being in the office of the clerk of (state what court) in a certain cause of A.B. v. C.D.

Of Cattle: Code 369.

At _____, on _____, A.B. unlawfully did steal certain cattle, to wit, one horse (or one cow), the property of C.D.

Of Things Fixed to Buildings: Code 372.

A.B., at _____, on _____, unlawfully did steal a quantity of lead (or copper, or any fixture, describing it), the property of C.D., then being fixed in a certain dwelling-house (or stable, or coach-house), belonging to the said C.D. and situated in (describe where) aforesaid.

Of Trees Worth \$25 or More: Code 373.

A.B., at _____, on _____, unlawfully did steal one ash (or maple, or as the case may be) tree of the value of at least twenty-five dollars, the property of C.D., then growing in a certain (describe the place) belonging to the said C.D., and situated in _____, aforesaid.

If of value of less than \$25.00, see Summary Convictions Offences, under Theft.

Of a Will: Code 361.

A.B., at _____, on _____, did unlawfully steal a certain testamentary instrument, to wit, the last will and testament (or a codicil to the last will and testament) of C.D.

Of a Document of Title: Code 362.

A.B., at _____, on _____, did unlawfully steal a certain document of title to goods, to wit, one bill of lading (or one ware-

house keeper's receipt for two thousand bushels of wheat, *or as the case may be*; or a certain document of title to lands, to wit, a deed from C.D. to E.F. of *(describe what land)*.

Of Electricity: Code 351.

A.B., at , on , did unlawfully and fraudulently (or maliciously) abstract (or divert, or consume, or cause to be wasted) electricity then being carried on the wire of the power company (or as the case may be) by *(describe as accurately as possible the method by which the electricity was diverted, etc.)*.

Of Tree or Plant, etc., From Orchard or Garden, Over the Value of Five Dollars: Code 373.

If under five dollars in value one justice may convict; see Summary Convictions.

Stolen Property; Bringing into Canada: Code 398.

A.B., at , on , unlawfully did bring into (or have in the Province of Ontario in the Dominion of Canada certain personal property *(describing it)*, which had theretofore been unlawfully stolen by him, the said A.B. (or which the said A.B. then well knew had been unlawfully stolen), in the city of (New York), in the State of (New York), one of the United States of America *(or as the case may be)*.

In Cases Not Specially Provided For: Code 386.

A.B., at , on , did unlawfully steal *(state what)* the personal property of C.D.

Trade Mark Offences.

Code 488, 489, 490, 491(a), 992, 335(5).

See also Trade Mark Offences in Summary Convictions Cases.

Trading Stamps.

Supplying to Merchant: Code 505, 335(u) (v) (2).

Merchant Supplying to Customer: Code 506.

Customer Receiving Trading Stamp: See Trading Stamps in Summary Convictions Cases.

Trade Combines.

Code 496-498.

At _____, on _____, A.B. did unlawfully conspire (or combine, or agree, or arrange) with C.D. (or with the railway or steamboat, or transportation company known as the *naming it*),

(a) To unduly limit the facilities for transporting (or producing, or manufacturing, or supplying, or storing, or dealing in) a certain article (or commodity) which was the subject of trade or commerce, namely (*naming it*).

or

(b) To restrain (or injure) trade or commerce in relation to a certain article (*continue as above*).

or

(c) Or to unduly prevent (or lessen) the manufacture or production of a certain article (*continue as above*).

or

(d) Or to unduly prevent (or lessen) competition in the production (or manufacture, or purchase, or barter, or sale, or transportation or supply of a certain article (*proceed as above*), or in the price of insurance upon certain property (*describe how*).

Trustee, Criminal Breach of Trust by.

Code 390.

A.B., at _____, on _____, he then being a trustee of certain property, namely (*describe it*), for the use and benefit of C.D. (or as the case may be) under (*deed or will or any other written or verbal trust, stating it*), unlawfully and with intent to de-

fraud, and in violation of his trust, did convert the said property to a use not authorized by the said trust, to wit, to his own use (or as the case may be).

The consent of the Attorney-General is necessary before prosecution for this offence: Code 596.

Warehouse Receipt, etc., False.

Code 425.

See False Warehouse Receipt.

Weapon, Bringing Within Two Miles of Meeting.

Code 127.

A.B., at _____, on _____, he not then being the sheriff or deputy sheriff or a justice of the peace for the county (or district) of _____, or the mayor, or a justice of the peace, or other peace officer for the city (or town) of _____ (as the case may be) in the county (or district) of _____, in which a certain public meeting was held on the said day (or appointed to be held) at (describe it) or a constable or a special constable employed by any of the officials aforesaid for the preservation of the public peace at the said meeting, did unlawfully come within one mile of the place appointed for such meeting as aforesaid, armed with an offensive weapon, to wit, a pistol (or describe what the weapon was).

Weapon is defined by Code 2(24).

Wilful Injuries.

Defined and Explained: Code 509. *See "Explosions," Fire.*

Add to each of the following forms a description of the particular thing injured and how injury was done.

Destroying or Damaging any of the Properties Mentioned in Code 510(A).

A.B., at _____, on _____, did unlawfully and wilfully, and without legal justification or excuse, and without colour of right, destroy or damage certain property, to wit: (a)* a dwelling-house then and there situated, and belonging to C.D.; or a ship or boat called (*naming it*), and belonging to C.D.; such destruction, or damage, being caused by an explosion, and causing actual danger to the life of C.D. (or E.F., etc.), who was (or were) then in the said dwelling-house, or ship, or boat; or

(c)* A certain bridge or viaduct, or aqueduct (*describing it*) over or under which a highway or the _____ railway or the canal then and there passed, which said destruction, or damage, was so done by the said A.B., and so as thereby to render the said bridge, or viaduct, or aqueduct, or the said railway, or highway, or canal so passing over or under the same as aforesaid (or a part, etc.), dangerous or impassable; or

* A railway known as the _____ railway, the said damage or destruction being done by the said A.B. as aforesaid with the intent thereby to render the said railway dangerous or impassable.

Code 510(B). (a) (*Proceed as in above form to the **) a ship called (*state the name*), the property of C.D., and which was then and there in distress, or wrecked; or certain goods, or merchandize, or articles (*naming them*), which belonged to a ship called _____, which was then and there, or had theretofore been in distress or wrecked;

or

(b)* Certain "cattle" (*see definition in Code 2(5)*), to wit, a cow then belonging to C.D.; or the young of certain cattle, to wit (*a calf*), then belonging to C.D., which said damage was so caused as aforesaid by killing, or maiming, or poisoning, or wounding the said cow (or calf).

or

Code 510(C) * (a) A ship called (*name it*), with intent thereby to destroy *or* to render useless the said ship.

or

(b)* A mark *or* signal (*describing it*) then and there used for purposes of navigation.

or

(c) * A bank *or* dyke *or* harbour works, etc.

or

(d) * A navigable river *or* canal, etc.

(e) * The flood gate *or* sluice of a private water.

(f) * A private fishery *or* salmon river belonging to C.D. and situated (*describe it*), which said damage was caused by the said A.B. by putting lime *or* a noxious material (*describing what*) into the water of the said private fishery with intent thereby to destroy fish then being in the said fishery, *or* which were then to be put into the said fishery.

or

(g)* The flood gate of a certain mill pond *or* reservoir *or* pool (*describing it*), the property of C.D., which said damage was caused by the said A.B. by cutting through the said flood gate, *or* by destroying the said flood gate by (*state the means used*).

or

(h)* Certain goods, to wit (*state what*), the property of C.D., which were then and there in process of manufacture in a certain (*mill or factory, etc.*), such damage being then and there done by the said A.B. with intent thereby to render the said goods useless.

or

(i)* A certain agricultural *or* manufacturing machine *or* manufacturing implement (*stating what*), the property of C.D., the said damage being then and there done by the said A.B. with intent thereby to render the said machine *or* implement useless.

or

(j)* A hop bind then and there growing in a plantation of hops of C.D., situate (*describe where*), or a grapevine then growing in a vineyard of C.D., situate, *etc.*

or

Code 510(D) (a)* A tree, or shrub, or underwood, the property of C.D., and which was then growing in a certain park, or pleasure ground, or garden, or in a certain piece of land adjoining or belonging to the dwelling of the said C.D., situate (*describe*): the said tree (*etc.*), being thereby injured to an extent exceeding in value five dollars.

or

(b)* A post letter bag, or post letter, the property of the Postmaster General of Canada.

or

(c)* A street letter box, or pillar box, or a certain receptacle (*e.g.*, a letter box in the office of Hotel, in the of), then and there established by the authority of the Postmaster General of Canada for the deposit of letters or other mailable matter.

or

(d) * A certain parcel sent by parcel post, or a package of patterns, or samples of merchandise, or goods, or of seeds, or cuttings, or bulbs, or roots, or scions, or grafts, or a printed vote or proceeding, or a newspaper, or book, or mailable matter (*describing it*), sent by mail, and the property of the Postmaster General of Canada.

or

(e)* Certain real or personal property (*describing it*), belonging to C.D., and which was then and there so damaged by the said A.B., by night, to wit, between the hours of nine o'clock in the afternoon and six o'clock in the ensuing forenoon, and to the

value of twenty dollars. ("Property" defined: Code 2(32); "by night": Code 2(23).)

OR

Code 510 (E)* Certain real, or personal property (*describing any other property than those above mentioned*), of C.D., and which was then and there so damaged by the said A.B. by day to the value of twenty dollars.

Attempts to Injure or Poison Cattle: Code 536.

That A.B., on , at , did unlawfully and wilfully attempt to kill, or maim, or wound, or poison, or injure certain cattle, or the young of certain cattle, to wit (*state what*), the property of C.D.; or place poison in such a position as to be easily partaken of by certain cattle, etc. (*describe where the poison was placed, e.g.*) to wit, upon the grass in a certain pasture in which the said cattle then were feeding (*or in salt placed in a field or lane where the said cattle then were for the purpose of the same being partaken of, etc., describing the locality*).

"Cattle" defined: Code 2(5).

Cattle, Threats to Injure: Code 538.

To Buildings by Tenants or Mortgagors: Code 529(a).

A.B., on , at , being then and there possessed of a certain dwelling-house (*or other building, describing it*), or part of a certain dwelling-house, etc., which was then built on land, to wit (*describe the land*) subject to a mortgage held thereon by C.D. (*or which land was then held for a term of six months, or as the case may be, or at will, or held over after the term of a tenancy under a lease thereof to the said A.B. from C.D., the owner thereof*), did unlawfully and wilfully, without legal justification or excuse, without colour of right, and to the prejudice of the said C.D., * pull down or demolish (*or begin*

to, etc.), the said dwelling; *state the nature of injury and how done.*

or (a).

*Remove (or begin to remove) the said dwelling-house or building (or a part of, etc.) from the said land and premises on which it was so erected and built.

or (b).

*Pull down or sever from the freehold of the said land a certain fixture, to wit (*state what*) then fixed in or to the said dwelling-house or building (or the said part of, etc.).

To Election Documents: Code 528.

At _____, on _____, A.B., unlawfully and wilfully did destroy (or injure, or obliterate, or make, or cause to be made) an erasure (or addition of names or interlineations of names in or upon) a certain writ of election (or return to a writ of election, or pollbook, or voters' list, or ballot, or other document, stating what), to wit (*describe*), prepared and drawn out according to the law in regard to Dominion (or provincial, or municipal) elections.

Rafts, Booms, Dams, etc., Wilfully Injuring: Code 525.

At _____, on _____, A.B., unlawfully, wilfully, did break (or injure, cut, loosen, remove, or destroy) _____, certain dam (or pier, or slide, or boom, or raft, or crib of timber, or sawlogs), or block up (or impede) a channel (or passage-way) intended for the transmission of timber, the property of C.D. (*describe the acts by which injury or interference was done*).

Mines or Oil Wells, Injury to or Interference With: Code 520.

At _____, on _____, A.B. did unlawfully (a) cause water (or earth, or rubbish, or other substance, stating it) to be conveyed into a certain mine, or well of oil;

(b) Damage the shaft (or a passage) of a certain mine (or well of oil);

or

(c) Damage with intent to render useless a certain apparatus (or building, or erection, or bridge, or road, *stating what*) belonging to a certain mine, (or well of oil) by (stating now damage done);

or

(d) Hinder (*stating how*) the workings of a certain apparatus (*stating what*) belonging to a certain mine, or well of oil;

or

(e) Damage (or unfasten) with intent to render useless, certain rope (or chain, or tackle, *stating what*) used in a certain mine (or well of oil); (or upon a certain way or walk, *stating what*, connected with a certain mine or well of oil);

Add in each case:

Belonging to C.D., with intent to injure (or obstruct the working of), the said mine (or well of oil).

Witchcraft, Fortune Telling, etc., Pretending to Practice.

Code 443.

A.B., at _____, on _____, did unlawfully * pretend to exercise or use certain witchcraft (or sorcery, or conjuration, or enchantment).

or

*Undertake to tell fortunes.

*Pretend from his pretended skill in an occult or crafty science, to wit (*describe*); to discover where or in what manner certain goods or chattels, supposed to have been stolen (or lost), might be found.

Witness, Corrupting or Attempting to Corrupt.

Code 180. *See* Bribery.

Workman, Assault On.

Code 502.

At _____, on _____, A.B. and C.D., having before then unlawfully conspired (or combined) together with others to raise the rate of wages in a certain trade (business or manufacture, to wit (*state what*) did, then and there, in pursuance of said conspiracy, unlawfully make an assault upon (or use violence, or threats of violence to) E.F. with a view to hinder him from working (or being employed) at such trade (business or manufacture).

Wounding.

With Intent: Code 273.

A.B., at _____, on _____, with intent to maim (or to disfigure, or to disable) C.D. (or with intent to resist the lawful apprehension of the said A.B. (or of one E.F. by C.D.) under a lawful warrant legally authorizing such apprehension) did * unlawfully wound (or cause grievous bodily harm) to him, the said C.D., by (*stating how wound was inflicted*).

or Code 273.

*Unlawfully shoot at the said C.D. (or attempt, describing how, to discharge a loaded pistol, or gun, at the said C.D.).

Unlawfully Wounding: Code 274.

A.B., at _____, on _____, did unlawfully wound (or inflict grievous bodily harm upon) C.D. by (*state how*).

A Public Officer While on Duty: Code 275(b).

A.B., on _____, at _____, did unlawfully maim (or wound) C.D., who was then and there a public officer, to wit, an Inspector

of the Inland Revenue of the Dominion of Canada (*or as the case may be*) he, the said C.D., being then and there engaged in the execution of his duty as such officer, by (*state how wound was inflicted*).

or

Did unlawfully wound E.F., a person acting in aid of a public officer (*beginning and ending as in the preceding form*).

CHAPTER V.

SUMMARY CONVICTIONS BY JUSTICES.

In What Cases.

The jurisdiction of a justice to convict and punish for offences against the law, is limited to those matters in which some statute, either expressly or by necessary implication, gives him authority to do it: *R. v. Craig*, 21 U.C.R. 552; *R. v. Carter*, 5 O.R. 651. For instance, if a statute provides that a person who does something prohibited by law, shall be guilty of an offence, and upon summary conviction before a justice (or two or more justices) of the peace, may be fined or imprisoned; this expressly gives jurisdiction. If the statute says that such person is liable to punishment on summary conviction (without saying by whom) it necessarily means by a justice of the peace, and jurisdiction is implied: *Cullen v. Trimble*, L.R. 7 Q.B. 416.

A justice cannot convict a person for an indictable offence, but is merely to hold a preliminary enquiry as described in the last preceding chapter.

In the "Synopsis of Offences—Summary Convictions," at the end of this chapter, offences for which the justice may summarily convict, are stated; while those for which he is to hold a "preliminary enquiry" are set out in chapter IV., under "Synopsis of Indictable Offences."

Offences Under Dominion Statutes.

A justice has authority to convict for any offences over which the Parliament of Canada has legislative authority (such as offences under the Criminal Code), and for which by the particular statute a person is declared to be liable on "summary conviction," to punishment: Code 706(a); and also for those in

which the justice is given power, by any law, to make an order for the payment of money, or the performance of some act: Code 706(b).

Offences Under Ontario Statutes.

Justices have also authority by the Ontario Summary Convictions Act, R.S.O. ch. 90, to summarily convict for breaches of Ontario statutes or of by-laws or regulations passed under the Municipal Act, or of regulations of boards of health, or liquor license commissioners, where a penalty or punishment is imposed. All these are within the summary convictions jurisdiction of justices.

Territorial Jurisdiction.

Except in the special cases stated in pp. 6-8, *ante*, the offence must have been committed within the justice's county or territory. For instance, on a charge of fraud against a patron (living in the county of Lennox), of a cheese factory situated in the county of Hastings, it appeared that the milk alleged to have been fraudulently dealt with by the patron in Lennox, and afterwards delivered at the factory in Hastings, was supplied in the county of Lennox; in that case the justice of the county of Hastings has no jurisdiction and the case must be brought before a justice for the county of Lennox, where the milk was supplied and the offence therefore committed: *R. v. Dowling*, 17 O.R. 698.

Place Where the Justice is to Act.

He must perform all judicial acts within his county or territorial jurisdiction as defined by his commission; but he may do merely ministerial acts anywhere: *Paley on Convictions*, 8th ed. 19; *R. v. Beemer*, 15 O.R. 266; *Langwith v. Dawson*, 30 C.P. 375.

Taking an information is a ministerial act, and may be done anywhere; but issuing a summons or warrant and trying the case, are judicial acts and must be done within the justice's county. A judicial act is one in which the justice is to use a judicial discre-

tion to do it or not according to the rights of the matter; while a merely ministerial act is one which he is to perform as a matter of course.

In What Cases Two Justices are Required.

One justice sitting alone, has complete jurisdiction, unless the statute relating to the particular offence requires that there shall be two or more justices: Code 707. If two or more justices are required by the particular statute, they must all be present and act together during the whole of the hearing and determination of the case: Code 708(4).

In the "Synopsis of Offences—Summary Convictions," at the end of this chapter, it is noted at the end of the forms, when two justices are required; when not so noted, one justice suffices. But in any case several justices may sit together, with the consent of the justice who is first seized of the case, but not otherwise: see *ante*, p. 12.

If any one of two or more justices, sitting together in any case, should be absent during any part of the taking of the evidence or hearing, he must not act in the determination of the case.

In those cases in which the particular statute requires two justices to *hear* the case, one justice may receive the information and issue the process against the accused, and summon the witnesses and do everything preparatory to the hearing: Code 708; but the hearing must take place before at least two justices.

If, however, the statute relating to the offence requires the *prosecution to be brought* and not merely the *hearing* to take place (before at least two justices) both justices must be present together when the information (which is the *bringing* of the prosecution), is laid; and both justices must be named in the information and stated to be present together; but the information need only be *signed* by one of them: *R. v. Ettinger*, 3 Can. Cr. Cas.

387; *R. v. Brown*, 23 N.S.R. 21; *Ex p. White*, 3 Can. Cr. Cas.

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Procedure.

By section 711 of the Criminal Code the procedure in summary convictions cases (concerning the compelling of the appearance of the accused before the justice, receiving an information and respecting the attendance of witnesses, and the taking of evidence) is to be the same as that provided for preliminary enquiries for indictable offences which has been fully described in the next preceding chapter. The Ontario Summary Convictions Act provides that the procedure in the trials of offences against Ontario statutes, by-laws, etc., is to be the same as that provided by the Criminal Code. So the procedure described in the foregoing chapter IV., is that to be followed in all cases except when otherwise specified in following remarks.

Summary convictions cases are of two classes:—

1. Those in which an order may be made for the payment of money merely; or for the performance of some act.
2. Penal offences, in which by some statute it is provided that the justice may summarily convict and punish the offender: Code 710(2).

The Information.

In the first mentioned class the complaint need not be in writing, unless it is so required by some particular Act upon which the complaint is founded and if only a summons is to be issued: Code 710.

In the second class of cases the information need not be on oath or affirmation unless so required by some particular statute relating to the offence: Code 7 (2); but it must be in writing. But a warrant of arrest is never to be issued in any case unless the information is under oath, notwithstanding the provisions of Code 710(2); as the recital in the form of warrant—6 to the

Criminal Code—states that an information under oath has been laid: *R. v. McDonald*, 3 Can. Cr. Cas. 287.

And if the particular statute on which the case is founded, specially requires it, the information must be under oath; and in *all cases* it is a proper safeguard to require any person, who charges another with an offence, to pledge his oath to the *bond fides* of the charge.

When an accused is brought before a justice under a statute which requires a sworn information and the justice thereupon amends the information in the presence of both parties, it should be re-sworn; but if that is not done and no objection thereto is taken it is waived: *R. v. Lewis*, 6 Can. Cr. Cas. at p. 504.

For forms of oaths and affirmations, and the different modes of administering the same, see *ante*, p. 21.

By Whom Information May be Laid.

The complaint may be laid by the informant himself or by his solicitor or by anyone by his authority: Code 710(4).

As a general rule any person may lay the information; but in cases of private injuries being constituted, by some statute, the subject of a criminal charge, as in cases of wilful injuries to private property (see "Synopsis of Summary Convictions Offences" *post*), the party aggrieved or someone authorized by him must be the complainant. And when an act (such as a trespass to private property under the Petty Trespass Act, R.S.O. ch. 120, see "Synopsis of Offences" *post*) must, in order to be unlawful, have been done against the consent of the person aggrieved, the information must be laid by the owner of the property or person aggrieved, or on his behalf and at his instance: Paley, 8th ed. 81(c); notes 7 Can. Cr. Cas. 218; *R. v. Frankforth*, 8 Can. Cr. Cas. 57; *Robinson v. Currey*, L.R. 7 Q.B.D. 465. A complaint against a tenant for fraudulent removal of property, or for wilful injury to the premises, must be laid by the landlord, or by his authority: Paley 8th ed. 81(d); and

in all cases when the particular statute so expressly provides, the information must be laid by the party aggrieved or his agent.

Any person may prosecute summarily for infraction of a municipal by-law (or of the Ontario Health Act) even if the whole penalty goes to the municipality: *R. v. Chipman*, 1 Can. Cr. Cas. 81.

Against Whom Information to be Laid.

Generally it must be laid against the person who actually commits the act complained of. But in some cases the charge must be laid against the employer and not against the servant who is following his employer's instructions and acting within the scope of his authority; as in the case of locomotives being used on highways, without the precautions required by law; in such case the employer is the person liable, and not the man running it: *R. v. Toronto Ry. Co.*, 30 O.R. 214; *Re Chapman & London*, 19 O.R. 33; *R. v. T. Eaton Co.*, 29 O.R. 591; *Consumers' Gas Co. v. Toronto*, 23 A.R. 551.

Informations Against Several Defendants.

Any number of defendants may be joined in one information and conviction for an offence in which they are jointly engaged. "Where the offence is in its nature single and cannot be severed, then the penalty shall only be single; because though several persons may join in the commission of it, it still constitutes but one offence. But where the offence is in its nature several (as in the case of riot), and so every person concerned may be separately guilty of it, then each offender is separately liable to the whole penalty; because the crime of each is distinct from that of the others, and each is punishable for his own crime": Lord Mansfield, C.J., in *R. v. Clarke, Cowper*, p. 610. It is, of course, improper to join two persons in one proceeding if the offence charged against one of them has nothing to do with that charged against the other: *R. v. Hagerman*, 31 O.R. 637. It is otherwise

if the offence is several as above mentioned: *R. v. Littlechild*, L.R. 6 Q.B. 293, in which case several persons were charged with having together used a gun on Sunday, and each was held liable for the full penalty. It is in the discretion of the justice in such a case to join all the defendants in one information and try the cases together, or to proceed by separate informations: *R. v. Littlechild*. An assault by two persons upon the same party may be charged and punished as separate offences, or may be joined in one charge: *Re Brighton (Mag.)*, 9 T.L.R. 522. Unless the offence is a joint one, if two or more persons are joined in the one proceeding, each defendant must be made liable for his own fine and costs only: *Morgan v. Brown*, 4 A. & E. 515; *R. v. Cridland*, 7 E. & B. 853. A conviction is invalid if it awards one fine against different persons for their separate acts, even if each one has been guilty of a similar offence: *Gault v. Ellice*, 6 Can. Cr. Cas. 15; *R. v. Sutton*, 42 U.C.R. at p. 224.

Corporations

Are liable to summary conviction: *R. v. Toronto Railway Co.*, 2 Can. Cr. Cas. p. 481; and service is made by issuing a summons and serving (not the summons), but a notice on the mayor or chief officer or secretary of the corporation: *R. v. Toronto Railway Co.*, *supra*; *Newby v. Colt*, L.R. 7 Q.B. 293. The punishment upon conviction of a corporation can only be by fine, and can only be enforced by distress: *R. v. Toronto Railway Co.*, *supra*. See, also, *R. v. Union Colliery Co.*, 3 Can. Cr. Cas. 523; S.C., 31 Can. S.C.R. 81, as to the liability of corporations.

FORM OF NOTICE.

Canada.

Province of Ontario.

County of Huron.

} The King v. The (*name the corporation*).

To C.D., chief officer (*or secretary*) of the (*name of corporation*).

Take notice that upon the information of A.B., of , a summons was on the day of , 19 , duly issued by the undersigned, a justice of the peace in and for the county of , against the above named (*name of corporation*), requiring the said (*name of corporation*) to appear before me on the day of , 19 , at in the of in the county of , at the hour of o'clock noon, to answer to the charge that (*here set out the charge as laid in the information*).

And take notice that unless the said (*name of corporation*) appears before me at the said time and place and pleads to the said charge I shall proceed with the summary trial thereof as if the said (*name of corporation*) had duly appeared.

Dated at this day of , 19 .
J.P., county of .

Description of the Offence.

The "Synopsis of Offences—Summary Convictions," at the end of this chapter contains forms of charges to be inserted in informations.

An information need not allege that the offence was "against the form of the statute," or mention the statute: *R. v. Doyle*, 2 Can. Cr. Cas. 335.

It is sufficient if the description of the offence is given in the words of the statute or by-law relating to the offence, or any similar words: Code 723(3).

If the statement of the offence in the proceedings does not furnish sufficient information to the defendant, the justice may order fuller particulars in writing to be furnished to him: Code 723(2). For further observations on the subject *ante* p. 33.

Only One Offence to be Charged.

Code 710(3). The information must be for only one, distinct and definite offence: *R. v. Mabey*, 37 U.C.R. 248. If it should

happen that more than one offence is charged in the information, and objection is taken on that ground, the justice should call upon the prosecutor to elect which charge he will proceed with, and all but one charge should be struck out, the information being amended accordingly: *R. v. Alward*, 25 O.R. 519. This must be done before proceeding with the evidence. In *The King v. Austin*, 10 Can. Cr. Cas. 34, an objection of this kind was overruled by the justice and he proceeded to take evidence upon the several charges in the information until the conclusion of the prosecutor's case, when all were abandoned except one; the conviction upon that one was quashed by the Court on appeal. And where two offences were charged and a conviction made, and one penalty was imposed, but the conviction did not shew for which offence, the conviction was held to be bad, as it could not be pleaded on any subsequent charge for either of the offences: *R. v. Young*, 5 O.R. 184(a); *Simpson v. Lock*, 7 Can. Cr. Cas. 294.

The justice should be careful that the information is laid for one distinct offence; and that the conviction if any is for that offence only: *R. v. Farrar*, 1 Terr. L.R. 308. It must appear on the face of the information that the offence was committed within the justice's territorial jurisdiction. The information should state, the place where it was laid; the name and style of the justice before whom it was laid; and a sufficient statement of the offence charged, with date and place and the name and description of the offender.

No information or warrant is to be deemed insufficient for any of the defects or objections mentioned in Code 723, 724.

Amendment of Information.

An information if found defective may be amended at any time during the progress of the case. The form of information is to be the same as Form 3 in the Criminal Code.

Issuing Summons or Warrant of Arrest.

Upon receiving the information the justice will proceed in the manner described in preliminary enquiries in indictable offences,

ante p. 24. He must first enquire into the facts of the case as stated by the complainant and any other persons present (taking their statements on oath, unless the sworn information discloses sufficient facts to justify further proceedings: *R. v. Lizotte*, 10 Can. Cr. Cas. 316). This must be done in order to ascertain whether the facts justify proceeding with the case; and in considering the information, etc., he should take into consideration the matters stated in chapter III.; such as, whether the time for prosecution has expired or not, etc.

If the justice finds that the facts justify his proceeding with the case he will issue a summons or warrant; see *ante* p. 25, as to whether a summons or a warrant is to be issued.

The summons or warrant must be issued by the justice who took the information and cannot be issued by any other justice; but the case may be heard and determined by him, or by any other justice who acts with his consent, not otherwise. Any justice may take the information and issue the summons or warrant and another justice may hear the case and convict: Code 664, 708.

Proceedings on Sundays and Holidays.

As to this see the remarks *ante* p. 25.

Execution of Warrants of Arrest.

The observations and information *ante* p. 28, *et seq.*, apply to these proceedings; and also to "backing warrants," for execution in another county, *ante*, p. 30; detention of person pending the hearing; serving summonses and procuring the attendance of witnesses; remands, bail and all other proceedings preliminary to the hearing: Code 711.

Attendance of Parties Before the Justice.

Upon a summary trial the prosecutor need not attend personally; nor can the defendant be compelled to attend personally if only a summons has been served; it is sufficient if they appear

by counsel, attorney or agent: Code 720; *Bessell v. Wilson*, 1 E. & B. 488. If at the time named in the summons, the justice should be engaged in other official business, the defendant who has been summoned must wait: *R. v. Wipper*, 5 Can. Cr. Cas. 17.

Warrant on Non-appearance of Defendant.

If the accused (after being served with a summons) does not appear either personally or by his counsel or agent, the justice may either proceed to hear the case, in his absence, or he may issue a warrant for his arrest: Code 718, Form 7, Criminal Code; but before doing so the evidence, orally or by affidavit, of the constable who served the summons must be taken on oath, shewing to the satisfaction of the justice that the summons was duly served: *R. v. Levesque*, 8 Can. Cr. Cas. 505. Code 711, 712, provide that the proceedings to compel the appearance of the accused are to be the same as in preliminary enquiries: as to which see *ante* p. 36, *et seq.*, and follow the directions there.

If a summons is issued it must be served a reasonable time before that appointed for the hearing: Code 718; and what is a reasonable time depends upon the circumstances of each particular case. In *R. v. Eli*, 10 O.R. 727, the summons was served very shortly before the sittings of the Court, the justices refused to adjourn and convicted the defendant; the conviction was quashed by the High Court as being contrary to natural justice. Where a summons was served on defendant's wife at his residence at 11.30 p.m., returnable the next day at 10 a.m., at a place 25 miles distant, and the defendant being absent did not get the summons till the next forenoon, the conviction was quashed: *Re O'Brien*, 10 Can. Cr. Cas. 142. In *R. v. Smith*, L.R. 10 Q.B. 604, a summons was served on the defendant's wife on 10th March for trial on 12th March, the defendant being at the time at sea as a fisherman, and only returned after the justice had convicted him, and it was held that the summons had not been served a reasonable time. In that case Cockburn, C.J.,

said: "To convict a person unheard is a dangerous exercise of power, there being the alternative of issuing a warrant to arrest. Justices ought to be very cautious how they proceed in the defendant's absence, unless they have very strong grounds for believing that the summons reached him, and that he was wilfully disobeying it." Service in the morning of, or evening before, the trial is not sufficient in any case: *Ex p. Cowan*, 9 Can. Cr. Cas. at p. 457, and cases mentioned therein.

In the absence of the defendant and of the clearest evidence to satisfy the justice, not only that someone was duly served for the defendant, but also stating circumstances to shew that the summons has without doubt reached him, the justice should adjourn the hearing, and either serve another summons or issue a warrant to arrest: which may be executed as described *ante* p. 29. See also notes on this subject in 4 Can. Cr. Cas. 466, and 10 Can. Cr. Cas. 130. But if it is clear that the defendant is aware of the proceedings and is wilfully absenting himself, the justice may proceed and hear the case in his absence. Code 718 gives the justice authority to adopt either of these courses. If he proceeds in the defendant's absence he can only deal with the case as stated in the information and the summons served, and no material amendment or change can be made in them, so as to charge any separate and distinct offence from that for which the summons was issued: *Ex p. Doherty*, 1 Can. Cr. Cas. 84; *R. v. Grant*, 34 C.L.J. 171; *R. v. Lyons*, 10 Can. Cr. Cas. 130, in which it was held that a conviction in the defendant's absence after substitutional service, for unlawfully keeping liquor for sale, when the information and summons were laid in the first place for a charge of illegally selling liquor was bad. The justice must take the evidence and hear the case with the same formality in defendant's absence as it he was present, and cannot convict without sufficient evidence; the defendant does not confess the offence by failing to appear: *Paley* 114.

As a justice has no jurisdiction over a defendant who is at the time personally out of the country, a summons served sub-

stitutionally during that time, is of no effect; and a justice cannot proceed in the defendant's absence even if service of the summons has been made on someone at his residence: *Ex p. Donovan*, 3 Can. Cr. Cas. 286; *Ex p. Fleming*, 14 C.L.T. 106.

If the defendant appears personally or by counsel, but the prosecutor, after due notice, does not appear either personally or by his agent, the justice may dismiss the case with or without costs, as he may see fit: Code 719, 722(2)(3); or he may adjourn the case to some other day upon such terms as he thinks fit; *e.g.*, he may order the complainant to pay the costs of the day, including the expenses of the defendant and his witnesses in attending: Code 719.

FORM OF NOTICE TO PROSECUTOR.

The signing, on information of A.B. v. C.D. for (*state the charge*).

You, the above-mentioned prosecutor, A.B., are required to take notice that the hearing of the case above mentioned before the undersigned will take place at _____ in the _____ of _____ in the county of _____, at the hour of _____ o'clock noon on the _____ day of _____ A.D. 19 _____. And in default of your appearing either personally or by your solicitor or agent at the said time and place, the case may be dismissed with costs against you, or may be proceeded with in your absence.

Dated this _____ day of _____ A.D. 19 ____.

E.F., justice of the peace,
County of _____.

It must be proved that this notice has been given in due time, manner and form, before proceeding in the complainant's absence under this section: Code 719.

If the Prosecutor Does Not Appear After Due Notice,

The justice instead of dismissing it may proceed to try the case and dispose of it; but if the prosecutor is a necessary wit-

ness the case may be adjourned, and the prosecutor may be summoned as a witness, and compelled to attend, by the same process as an ordinary witness: Ex p. Bryant 27 J.P. 277; see *ante* p. 37 as to the proceedings to compel the attendance of wit-

If Neither of the Parties Appear Personally,

Or by solicitor, the justice may, if he sees fit, proceed as if they were both present: Code 722(2); Paley 112; and may hear the evidence, if any is offered, and may convict the accused and award punishment, proceeding with the same formality as if trying the case in the presence of the parties; or he may dismiss the case with or without costs against the prosecutor: Code, 722(3).

If Both Parties Appear,

Either personally or by their solicitor, the justice will proceed to try the case in the manner described in the following pages.

The place in which the justice hears the case is an open public court and the general public must have access to same so far as the place can conveniently contain them: Code 714. If the place become so overcrowded as to inconvenience or interfere with reasonable comfort or convenience in conducting the case, the justice may exclude all but a reasonable number of spectators.

Rights of Parties to Counsel.

The defendant must be allowed to make his full answer or defence, and to have the fullest opportunity to cross-examine witnesses by himself or his counsel or agent: Code 715. The complainant also has the right to conduct the case and to have all witnesses examined and cross-examined by counsel or solicitor on his behalf: Code 715(2).

The Hearing.

As to defects and objections to the proceedings taken anterior to the hearing, see Code 723, 724, 725.

If the accused seems to be under the age of 16 years, he must be dealt with differently from an older person, and under the laws relating to "Juvenile Offenders," as to which see *ante* p. 43, and see Code 779.

The justice in the first place is to state to the accused or his counsel or solicitor, the substance of the information (usually by reading it to him), and he is to be asked if he has anything to say why the accused should not be convicted (that is whether he pleads guilty or not guilty to the charge); or why the order asked for by the complainant should not be made: Code 721.

Plea of Guilty.

If the defendant, either personally or through his solicitor or counsel, admits the truth of the information, and shews no sufficient cause why he should not be convicted, the justice will then proceed to convict him or make the order against him: Code 721(2).

But if the accused is not personally present the justice should require written authority to enter a plea of guilty offered by counsel or solicitor: *Ex p. Gale*, 35 C.L.J. 464.

Plea of Not Guilty.

If the accused does not admit the charge, the justice will proceed to take the evidence: Code 721(3).

Procuring Attendance of Witnesses and Taking of Evidence.— Witnesses in Canada.

The proceedings will be the same as in preliminary enquiries: Code 711, 721(3). These are described at pp. 39-42 *ante*, with this difference that in summary conviction cases the summons to witness may be served on a witness (and a warrant on default may be executed) anywhere in Canada, and by a constable or "any other person" to whom it may be entrusted for service, or to

whom the warrant of arrest may be directed: Code 713. A witness in summary convictions cases cannot be arrested unless witness fees have been prepaid or tendered to him, differing in this respect from preliminary enquiries in indictable offences: *R. v. Chisholm*, 6 Can. Cr. Cas. 493. It should also be shewn that the witness was a material one.

Witnesses Out of Canada.

A commission may be issued by the High Court or County Court to take evidence out of Canada, but only with the leave of the Attorney-General, first obtained: Code 716(2).

Taking the Evidence.

The evidence for both parties is to be taken on oath or affirmation (and it is to be taken in writing in all cases: *R. v. McGregor*, 10 Can. Cr. Cas. 313) and in the same manner as in preliminary enquiries described *ante* p. 44; Code 721(3), 716.

The evidence for the prosecutor is taken first, followed by the evidence for the defence, after which the prosecutor is entitled to offer further evidence in reply if he sees fit; but no evidence in reply can be given on the part of the prosecutor if the only evidence offered for the accused, was as to his general character; if evidence on the merits is given on behalf of the accused, then evidence for the prosecutor may be received in reply: Code 721(4). No new matter can be so introduced by the prosecutor without the justice's leave, but only such as tends to explain any new matter arising in the evidence for the defence. If, however, new evidence is permitted by the justice, the defendant is entitled to cross-examine and adduce evidence to meet it, if he so desires.

Evidence Negating Exceptions or Conditions in the Statute.

See Code 717.

Cross-Examination of Witnesses.

Each party has the right to fully cross-examine the opposing witnesses: Code 715. If called as a witness the prosecutor is not bound to disclose on cross-examination the source of the information on which he laid the charge; for his answers to such questions would not tend either to prove or disprove the charge, and are irrelevant; unless it clearly appears to be necessary in the interests of the elucidation of the truth of the charge or defence: *R. v. Sproule*, 14 O.R. 375.

As to the scope of the cross-examination of the prosecutor who gives evidence and also of the defendant, see the above case of *R. v. Sproule*, and *R. v. D'Aoust*, 5 Can. Cr. Cas. 407, where the subject is fully treated.

Witnesses for the Defence.

All witnesses for the defence as well as for the prosecution must be allowed to give evidence: Code 715.

Taking Evidence in Shorthand.

The same proceedings will be taken in that event as are provided for preliminary enquiries and as described *ante* p. 45.

Adjournments and Remands

Are provided for by Code 722; and see also the observations *ante* at p. 34 as to these, and as to the taking of recognizances for defendant's appearance or his remand to jail; estreating such recognizances on defendant's failing to appear, and issuing warrant for his arrest.

An adjournment on a summary trial cannot be for longer than "eight days" at any one time, differing in this respect from adjournments on preliminary enquiries, which may be for eight *clear* days: see p. 35. There will be one day less maximum time of adjournment in a summary trial case. If the defendant expressly consents to allow a longer adjournment than eight

days he cannot afterwards object: *R. v. Heffernan*, 13 O.R. 616; *R. v. Hazen*, 20 A.R. 633. In computing the eight days the day of the adjournment is excluded and the day of the adjourned hearing is included: *R. v. Collins*, 14 O.R. 613. There may be several adjournments from time to time as the interests of justice may require, but they must be for good and sufficient reasons. A justice has no right to adjourn and remand the accused to custody merely to suit his own personal convenience; and he would be liable in trespass for so doing. He must either go on with the case himself or direct that the accused be taken before another justice for trial: *Gray v. Customs Commissioners*, 48 J.P. 343.

One justice may adjourn the case, although the statute requires two justices to hear it: *R. v. Manary*, 19 O.R. 691. The time and place to which the adjournment is made must be stated in the presence and hearing of both parties or their counsel then present. And the adjournment must be made by the justice, and not in his absence by his clerk: *Paré v. Recorder of Montreal*, 10 Can. Cr. Cas. 295.

Hearing of Argument.

At the conclusion of the evidence for both parties, the justice must hear what each party or his counsel or solicitor has to say: Code 715, 726.

Adjudication.

After considering the whole matter the justice is to proceed to determine the case, and either dismiss it, or convict, or make the order against the defendant: Code 726. The justice may adjourn the matter to consider his judgment, but must in the presence and hearing of both parties, fix a time and place to announce his adjudication. He cannot adjourn *sine die*, and then give judgment in the absence of either of the parties, without previous notice to them; a conviction so made will be invalid: Ther-

rien v. McEhren, 4 Rev. de Jur. 87. The parties have the right to be present when the decision is given, in order to protect their interests. But if at the time fixed or after notice to them they do not attend, he may adjudicate in their absence: R. v. Quinn, 28 O.R. 224; R. v. Donerty, 3 Can. Cr. Cas. 505.

The justice in deciding the case must act upon the evidence only; and if he views the *locus in quo*, the conviction will be bad, even if the accused was present at such view: R. v. Petrie, 20 O.R. 317; Re Sing Kee, 5 Can. Cr. Cas. 86.

If the defendant does not attend at the time appointed to give judgment the justice can only adjudicate upon the charge for which accused was tried: Ex p. Doherty, 1 Can. Cr. Cas. 84. He cannot, after adjourning a case for the purpose of considering his judgment, amend the information in the defendant's absence; and a conviction on such amended information will be quashed: R. v. Gough, 22 N.S.R. 516; R. v. Grant, 30 N.S.R. 368.

If the justice tries two separate charges against the same defendant at the same sitting he should adjudicate and dispose of one before proceeding to try the second case: Hamilton v. Walker (1892), 2 Q.B. 25; 7 Can. Cr. Cas. 299; R. v. Burke, 3 Can. Cr. Cas. 14. But if no part of the evidence in the one case is such as would likely affect the mind of the justice in the consideration of the other this rule does not apply: R. v. Butler, 32 C.L.J. 594; 7 Can. Cr. Cas. 299; R. v. Fry, 19 Cox 135; 7 Can. Cr. Cas. 300; R. v. Bullock, 6 O.L.R. 663; R. v. Bigelow, 8 Can. Cr. Cas. 132; R. v. Burke, 8 Can. Cr. Cas. 14. But in all cases it is more expedient to decide the case first tried before taking the evidence in the second case.

Memorandum of Adjudication: Code 727.

Immediately after announcing his decision the justice should make a full note of it at the foot of the proceedings. This is called the "minute of adjudication," and should be done carefully, and before the justice leaves the bench; and it should be

read, or the purport of it announced to both parties. It is the basis of all the future proceedings: the formal conviction afterwards made out is only the entering in proper form of the proceedings which have already taken place: *R. v. Mancion*, 8 Can. Cr. Cas. 220. A copy of the minute is to be served on defendant: Code 731.

The minute or memorandum should contain a full minute of the conviction, the penalty by fine or imprisonment, amount of costs, when the money is to be paid and what the proceedings are to be to enforce payment in case of default. The formal conviction may be made out at any time afterwards and it must be in conformity to the memorandum of adjudication. Where the formal conviction provided for hard labour which was not mentioned in the minute of adjudication, the conviction was held to be bad and the defendant was discharged on habeas corpus: *Ex p. Carmichael*, 8 Can. Cr. Cas. 19; *R. v. Beagan*, 6 Can. Cr. Cas. 56, and notes at page 59 and 8 Can. Cr. Cas. p. 20, on the subject of non-conformity. If there has been any omission in the minute of adjudication, however, the defendant may be brought back and the minute corrected in his presence: 8 Can. Cr. Cas. p. 20. If the justice prefers to make out the formal conviction or order before leaving the bench he may do so and the minute of adjudication will then of course be unnecessary and may be omitted: *Ex p. Flannigan*, 2 Can. Cr. Cas. 513. Forms of convictions 31, 32, 33, in the Criminal Code; the form of order of dismissal is Form 37.

The decision of a majority of several justices who have tried the case governs; if the bench is equally divided, there is no decision, and another information may be laid and the case tried again: *Kumis v. Graves*, 57 L.J. Q.B. 583; or the case may be adjourned before another justice or justices and the trial taken *de novo* including the taking of evidence: *Douglas*, p. 87.

Punishment on Conviction.

In all cases except those referred to in section 729 of the

Criminal Code (to which refer), the justice may if he thinks fit discharge the offender without punishment, if it is a first offence, and upon the offender making such satisfaction to the party aggrieved as the justice ascertains to be proper: Code 729. If punishment is awarded it must be strictly in accord with the provisions of the statute governing the offence; and must not exceed the maximum, nor be less than the minimum punishment if the minimum is fixed by the statute. If an offence is punishable by three months in jail, a conviction awarding ninety days is bad; as that period may exceed three months. *R. v. Gavin*, 1 Can. Cr. Cas. 59.

Subject to the limitations provided by law the quantum of punishment is entirely in the discretion of the convicting justice: Code 1028, 1029. When the statute provides for a fine and imprisonment, both or either may be awarded. The justice is not compelled to inflict both: *R. v. Robidoux*, 2 Can. Cr. Cas. 19 unless the statute relating to the offence expressly provides that both are to be imposed: *Ex p. Kemp*, 7 Can. Cr. Cas. 447.

If the particular statute does not limit or state the punishment to be awarded for the offence, section 1052(2) of the Criminal Code applies, and provides that it shall be by a fine not exceeding \$50, or by imprisonment for not more than six months, with or without hard labour; or both fine and imprisonment, as the justice thinks the nature of the case requires: Code 1052(2).

If the defendant is convicted of two or more offences under two or more charges at the same sitting the sentences of imprisonment may run concurrently, or may take effect one after the other, as the justice directs: Code 1055. It is usual to make them concurrent. Imprisonment may be with or without hard labour: Code 1057.

When Fine to be Paid.

The fine and costs may be ordered to be paid forthwith, or time may be given. If no time is stated, it is payable forthwith: *R. v. Caister*, 30 U.C.R. 247.

Costs

Code 735, 736, provide that the justice may in his "discretion" award and order that costs shall be paid. The award of costs against the prosecutor on dismissal is provided for by Code 736; and against the defendant on conviction by Code 735, in cases under Dominion laws; and by R.S.O. ch. 90, sec. 4, in cases of breaches of Ontario laws. The amounts must be specified in the conviction or in the order of dismissal: Code 737; and the payment of them may be enforced in the same manner as a penalty or fine may be enforced as mentioned below: Code 737; or if there is no penalty they are to be recoverable by distress, and in default of no sufficient distress by imprisonment as stated by Code 738.

What Costs to Include.

They may include the justice's, the constable's and also witness fees if the justice in his discretion awards them.

Tariff of Costs.

The tariff for justice's, constable's and witness fees in cases under the Criminal Code and in other Dominion laws, is contained in Code 770.

The tariff in cases for breaches of Ontario law, by-laws, etc., is given in R.S.O. ch. 95, secs. 1 and 4, as to justice's fees and witness fees; and in R.S.O. ch. 101, p. 1046, as to constable's fees. These tariffs differ from each other in some respects; and care must be taken to apply the right tariff. The Dominion tariff does not apply to cases for breaches of Ontario laws, by-laws, etc.; and *vice versa*: R. v. Excell, 20 O.R. 633. No costs except those provided by the above tariffs can be charged; and if any costs should be included which are not so provided the conviction will be invalid and may be set aside: Ex p. Lon Kai Long, 1 Can. Cr. Cas. 120. A conviction which included in the costs awarded, a

charge for the use of the hall where the trial took place, was quashed: *R. v. Elliott*, 12 O.R. 524.

If a justice takes excessive costs by mistake, he may be compelled to refund: *McGillivray v. Muir*, 7 Can. Cr. Cas. 360; and if he does so wilfully, he may be prosecuted criminally: Code 1134; *Ex p. Howard*, 32 N.B.R. 237; *McGillivray v. Muir*, 7 Can. Cr. Cas. 360; and is liable to a penalty: Code 1134; Ontario Statutes, 1904, ch. 13, sec. 2.

To Whom the Costs Are Payable.

The costs awarded on conviction or dismissal must be ordered to be paid to the prosecutor or defendant as the case may be, and not to the justice: Code 735, 736; *R. v. Binney*, 1 E. & B. 810; *R. v. Roache*, 32 O.R. 20; *R. v. Law Bow*, 7 Can. Cr. Cas. 468.

The constable's costs (but not those of the justice or witnesses) are paid by the county in cases of summary convictions if they cannot be realized from the parties to the case or if the justice has not ordered payment of them. For instance, in vagrancy cases in which the accused is committed to prison and other similar cases, the county pays the constable's fees. The account for same is to be sent to the clerk of the peace for submission to the board of audit quarterly. Such account need not be in duplicate, but in other respects the directions at page 63, *ante*, apply.

The Ontario Statute, 1904, ch. 13, sec. 1, respecting justice's fees, applies only to cases of preliminary enquiries in indictable offences and not summary convictions; so that in vagrancy and other cases of summary convictions in which no costs can be collected from the parties the justice is not entitled to recover any fees from the county under that statute.

Security for Defendant's Good Behaviour.

By section 748 of the Criminal Code, the justice may in addition to or in lieu of any punishment, order that the defendant

give sureties for his future good behaviour for any time *not exceeding twelve months* (Re Smith's Bail, 6 Can. Cr. Cas. 416), if the offence is one directly against the peace, such, for instance, as riot, assault, fighting or gross disorderly conduct in a public place, etc., and if the offence was committed under circumstances which render it probable that the defendant will again be guilty of the same, or some other offence, against the peace, unless he is bound over to good behaviour; as for instance, if he has been previously guilty of similar conduct. In such case, the justice will add to the usual form of conviction the following clause:—

And I do further order and adjudge that in addition to the said sentence hereinbefore imposed by me upon the said ^{as} aforesaid, the said ^{be} and is hereby required forthwith to enter into his own recognizance and give security in two sufficient sureties in the sum of [,] to keep the peace and be of good behaviour for a period of (*state time, not exceeding twelve months*).

Recognizance for Good Behaviour

Form 49 in the Criminal Code.

Commitment for Default of Sureties.

If the defendant does not give security for good behaviour as ordered, he may be committed to jail: Form 50. For further observations on this subject see "Articles of the Peace" in the "Synopsis of Offences—Summary Convictions."

Formal Record of Conviction.

Forms of Convictions 31, 32 and 33 are to be used according to the circumstances. The formal conviction may be made out at once at the trial or it may be made out afterwards: Code 727. It must be signed and *sealed* by the justice, or by all the justices if more than one tried the case; or by a majority of them if some

dissent. The majority may convict. The conviction must shew on its face all things requisite to the justice's jurisdiction: as to which see notes at page 84 of 8 Can. Cr. Cas.

How Penalty is to be Ordered to be Enforced.

In awarding, by the minute of adjudication and conviction, the measures to be taken to enforce payment, the justice may either apply those which are provided by the particular statute or clause relating to the offence, or he may (whether the same does or does not provide such measures), adopt those contained in Code 738, 739, 740.

These latter provisions of the Criminal Code are made applicable also to convictions for offences against Ontario laws, by R.S.O. ch. 90, sec. 2(3). The following are the proceedings authorized by the above sections of the Criminal Code.

Distress Warrant.

Form 39. The first proceeding to be awarded by the conviction for enforcing payment, is a warrant of distress; but distress should not be ordered if the justice finds that it will be ruinous to the defendant or his family; or if the defendant acknowledges, or it otherwise appears, that he has not sufficient seizable goods to make the money: Code 744. In either of these events, the distress should be omitted, the reason for so doing being stated in the memorandum of adjudication and formal conviction; and in that case the justice will award commitment alone, in default of payment and not order distress. It was held, however, in *Ex p. Casson*, 2 Can. Cr. Cas. 483, that the conviction was good when the distress was omitted, without expressly stating the reason for it, in the conviction. But if the reason is so stated the truth of it cannot be controverted: *Mechiam v. Horne*, 20 O.R. 267.

The defendant is entitled to be heard on the question of dispensing with the distress, before that is done: *Re Clew*, 8

Q.B.D. 511; *R. v. Rawding*, 7 Can. Cr. Cas. 436, 441, 442; notes 9 Can. Cr. Cas. 562. So before dispensing with distress, the justice must state to the defendant that he proposes to do so, for either of the reasons above mentioned, and ask him if he has anything to say upon the subject; and anything he may say should be taken down and inquired into, before ordering that distress be dispensed with. The defendant may prefer to have the penalty recovered by distress, instead of being committed to gaol; but even so, that course will not be allowed if it really appears that there are not sufficient goods to meet the amount; or that it would be ruinous to the defendant or to his family, to levy a distress. In deciding whether or not to omit distress the justice is exercising a judicial function, and should do so only in the presence of the parties and on hearing what they have to state; see cases cited in 9 Can. Cr. Cas. 564.

Warrant of Commitment.

If distress is dispensed with as above mentioned, the minute of adjudication should award that, on default of payment of the fine and costs, the defendant be committed to gaol; and the formal conviction, afterwards made out, will be Form 32 in the Criminal Code.

If, however, distress is ordered, the minute of adjudication will state that, if payment is not made, a distress warrant is to be issued; and that if sufficient goods to realize the money cannot be found, the defendant is to be committed to gaol; and in that case, the formal conviction will be Form 31, in the Criminal Code.

The period of imprisonment to be awarded, in default of payment, is usually stated in the statute or clause relating to the offence; and if so, it must not exceed what is so stated; but if the statute or clause does not so provide, section 739 of the Criminal Code applies; and by that section the imprisonment may be for any period not exceeding three (calendar) months.

Such imprisonment may be with or without hard labour, in the

discretion of the justice; if any imprisonment *for the offence* may be ordered to be with hard labour, then imprisonment *in default of payment* of the fine may also be with hard labour: Code 739(2).

The period of imprisonment provided by the statute in default of payment of the fine, is to be distinguished from that provided as punishment for the offence itself.

In his award of imprisonment, whether as a punishment for the offence, or in default of payment of a fine, the justice may in the conviction make the following directions:—

1. If the offender is already in gaol undergoing punishment for another offence, the justice may order that the imprisonment for the subsequent offence shall begin at the expiration of the imprisonment then being undergone: Code 746.

2. If the defendant is convicted by the same justice at the same sitting of more than one offence, he may award either that the sentences may run concurrently, or that they shall take effect one after the other.

3. Or the justice may award (in cases where a fine and imprisonment are both awarded) that the imprisonment imposed for default in payment of the fine shall begin after the expiry of the term of imprisonment imposed as punishment for the offence: Code 740.

All the above matters are to be considered and dealt with by the justice before he leaves the bench, and while the parties are before him; and are to be inserted in the minute of adjudication.

The minute of adjudication should contain the following: that the justice has found the accused to be guilty and that he has convicted him of the charge; that the defendant is adjudged to forfeit and pay a fine, stating the amount, and costs, stating the amount, and when they are to be paid: that if not so paid a distress warrant is to be issued; and that if no sufficient distress is found the defendant is to be imprisoned (stating in what gaol) for the time adjudged, unless the fine and costs are sooner paid.

If distress is dispensed with, or if the punishment awarded for the offence is to be by imprisonment only, or by both fine and imprisonment, the minute of adjudication will include suitable provisions. The formal conviction may be drawn up at any time afterwards.

Issuing and Executing Process to Enforce Punishment.

Issuing Distress Warrant.

If the fine and costs are not paid as provided in the conviction (and distress has not been omitted as stated *ante* page 167), a distress warrant will be issued: Code 741 in the Forms 39 or 40, as the case requires.

Who to Issue Warrants.

The warrant of distress (and also the warrant of commitment mentioned below) may be issued either by the convicting justice; or by any other justice for the same county or district: Code 708(3); and one justice may issue the warrant (of distress or commitment) even if the statute relating to the offence requires two justices to try the case and convict: Code 708(2).

What Constable to Execute Warrant.

It may be directed to any constable of the county by name, or "to all or any of the constables" of the county, according to the form given in the Criminal Code.

The constable who laid the information, and so is the private prosecutor, is not disqualified from executing a warrant issued in a prosecution under the Criminal Code: *Gaul v. Township of Ellice*, 6 Can. Cr. Cas. 15; *R. v. Heffernan*, 13 O.R. 616; but if the constable has any personal or pecuniary interest to serve in the matter, and is not acting in a purely official capacity, he is disqualified from acting as constable in executing warrants in a case in which he has laid the information: *Gaul v. Township*

of Ellice, 6 Can. Cr. Cas. p. 19, and cases there cited and in the notes at end of the case.

Remand During Execution of Distress Warrant.

On a distress warrant being issued, the defendant may either be allowed to go at large on his own recognizance, or with sufficient sureties, pending its enforcement (see Recognizance on Remand *ante* p. 34); or he may, by verbal or written order, be kept in safe custody until the constable can make his return to the distress warrant: Code 745.

Where Goods Out of County.

If the constable cannot find sufficient goods of the defendant in the county, but there is reason to believe the defendant has sufficient goods elsewhere, the warrant may be "backed" or endorsed (Form 47) in any other county. The warrant may then be executed by a constable of either the county in which it was issued or by a constable of the county in which it was so "backed": Code 743.

Which Goods are Exempt From Seizure.

The Ontario exemption law only applies to exempt goods from seizure under civil process from Ontario Courts, and there is no law providing for exemptions from seizure under a distress warrant in a criminal case; but, as has been seen, the justice is not to issue a distress warrant if it appears that it would be ruinous to the defendant's family: Code 744. If the only goods seizable are the defendant's household effects necessary for his family's use, and his implements of trade which are necessary to earn a living, they should not be taken. So that goods named in the Ontario Exemptions Act, R.S.O. ch. 77, sec. 2, should not be seized under distress.

There is no provision made by any Dominion or Ontario

statute as to the proceedings to sell the goods seized; but in analogy to sales under distress warrant for rent, etc., notices of the sale should be put up for eight days, and a notice of it should be given to the defendant; a list and appraisement of the goods seized should also be made by at least one competent and disinterested person.

The tariff provides a fee for *advertising* and *appraising* the goods (see Tariff in Code 770), indicating that the goods must be *appraised* and *advertised* for sale.

The following forms of the constable's proceedings are submitted:—

CONSTABLE'S INVENTORY OF GOODS SEIZED UNDER WARRANT OF DISTRESS.

An inventory of goods and chattels of C.D. by me this day seized and distrained in the of in the county of , by virtue of a distress warrant issued by E.F., Esquire, a justice of the peace in and for the county of , dated the day of , A.D. 19 , under a conviction (or order) made by the said E.F., as such justice on the day of , A.D. 19 ; that is to say, (*specify the articles seized*).

Dated this day of , A.D. 19 .

A constable of the said county.

APPRAISEMENT.

We, G.H. and I.K., having at the request of L.M., a constable of the county of , examined the goods and chattels mentioned in the annexed inventory, do appraise the same at the sum of \$.

Witness our hands this day of , A.D. 19 .

G.H.

I.K.

NOTICE OF SALE OF GOODS DISTRAINED.

To C.D.

By virtue of a distress warrant issued by E.F., Esquire, a justice of the peace in and for the county of , under a conviction (or order) made by the said justice against C.D., I have distrained of the goods and chattels of the said C.D. to wit: (*describe property*). All of which goods and chattels will be sold by public auction at on the day of , A.D. 19 , at the hour of o'clock in the noon; unless the moneys to be levied under the said distress warrant, with the costs of executing the same, amounting in all to \$ are sooner paid.

Dated the day of , A.D. 19 .

L.M., Constable.

A copy of this notice should be served on the party whose goods have been seized.

The distress warrant must fix the time within which after seizure the defendant is to pay the fine, etc., in order to avoid the goods being sold: See Forms 39 and 40 to the Criminal Code; and the constable must wait for the time mentioned in the warrant before he sells the goods seized.

The constable should on seizure remove the goods from the defendant's premises immediately. He will be liable for trespass if he remains on the defendant's premises an unnecessarily long time: Paley, 8th ed. 339.

The constable may break open an outer door to execute a distress warrant for a penalty, the whole or any part of which goes to the Crown; but not on a warrant for a mere order for payment of money such as wages, or damage to private property, nor for penalties which are payable wholly to the complainant: Paley 339.

Before breaking open an outer door the constable should ver-

bally notify those within, who he is, and his business there, and demand admittance.

Constable's Fees for Executing Distress Warrant.

For the costs of distress in cases of convictions for offences against the Cr. Code or other Dominion laws, see Tariff under Code 770. The items will be as follows: Tariff, item 9, executing warrant of distress, and returning same, \$1; item 10, advertising under warrant, \$1; item 11, mileage to seize goods, per mile (one way only) 10c.; item 12, appraisement, 2 cents on the dollar on the value of the goods; item 13, commission on sale, 5 per cent. on the net produce of the goods. Item 13 will not be included in the above mentioned notice, as it would not be payable if the money is paid before sale of the goods.

The constable's costs of distress in cases of convictions for offences against Ontario laws and by-laws are provided by R.S.O. ch. 101, page 1046, as follows: Executing and returning warrant, \$1.50; advertising, \$1; mileage, per mile, one way, 13c.; appraisement, 2 per cent. on the value of the goods; commission on sale, 5 per cent. on net produce.

By R.S.O. ch. 75, sec 2(d), \$1 a day is allowed for keeping possession of the goods; and by sub-section (e), a commission of 3 per cent. may be charged if the money is paid before the sale. But this only applies to cases under Ontario laws; no commission is provided for by the Criminal Code before sale, in cases of convictions under Dominion laws.

Release on Payment.

Under Code 747 the defendant may at any time pay or tender to the constable the amount payable under the warrant, with the expenses of the distress, up to that time; and the officer must then cease to execute the warrant.

The constable, upon such payment, or upon sale of the goods, must return the warrant and money to the justice who issued it.

When There is not Sufficient Goods.

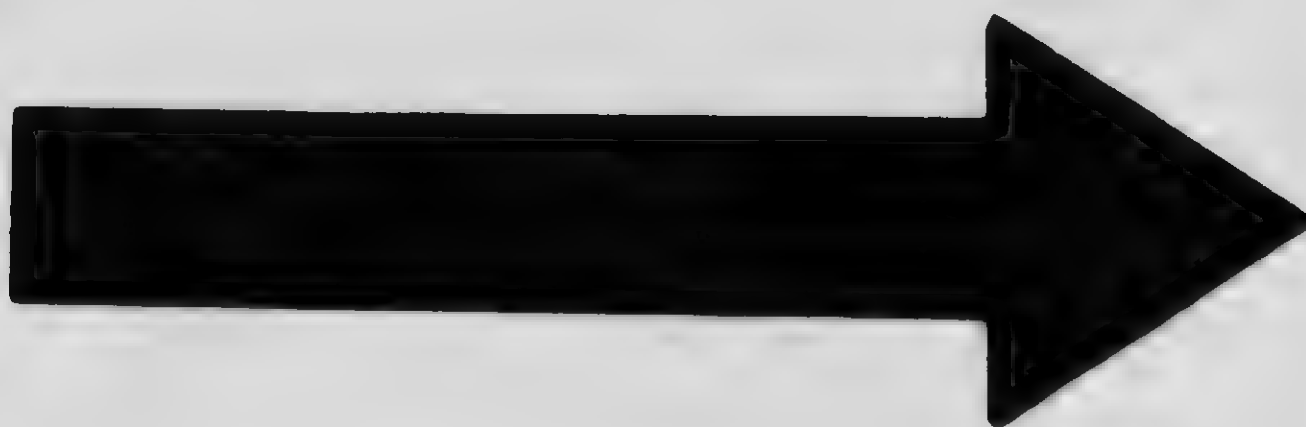
The constable should not make a seizure or execute a warrant of distress unless he finds sufficient goods to yield, on sale, the full amount to be realized under the warrant; for if part only is realized the defendant cannot afterwards be committed for the balance. If the goods are not sufficient, they ought not to be taken; and the warrant should be so returned: Paley, 8th ed. 341; *Sinden v. Brown*, 17 A.R. 173; *Trigerson v. Cobourg (Police)*, 6 O.S. 405; *R. v. Wyat*, 2 Ld. Raymond 1189; 1 Burns Justice, 30th ed., 867; see also 10 Can. Cr. Cas. 68.

Issuing Warrant to Commit.

Upon receiving the constable's return, Form 43, of no sufficient goods to answer the distress (or in case distress was omitted as explained *ante* p. 167), any justice of the peace for the county or district may issue the warrant to commit, as ordered by the conviction: Form 44, Code 741(2). The want of sufficient distress to justify commitment in default, can only be proved by the constable's return of no sufficient goods to the distress warrant, or by hearing the defendant upon the subject: *R. v. Rawding*, 7 Can. Cr. Cas. 436.

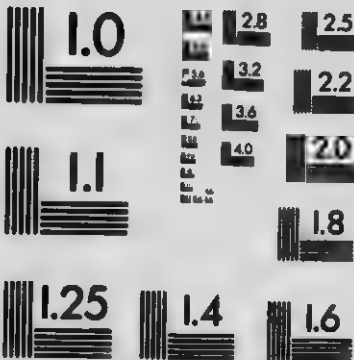
The constable must make a real effort to find sufficient goods before making a return of no-goods. In *Re Authers*, 22 Q.B.D. 345, cited in 7 Can. Cr. Cas. 442: a form was gone through of issuing and making a return of *nulla bona* to a distress warrant, but the only effort to find goods was to ask the defendant if he had any, his reply being in the negative which turned out to be incorrect; and the course pursued was held to be improper and might even make the commitment illegal.

Even when the constable has made a return of no-goods, the justice should, before issuing a warrant of commitment, satisfy himself by inquiries on the subject that the constable actually made reasonable efforts to find goods upon which to distrain: *R. v. Skinner*, 9 Can. Cr. Cas. 558 and notes.



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The cost of committing and conveying the defendant to gaol must be fixed and inserted in the warrant of commitment: *In re Bright*, 1 C.L.J. 240; *R. v. McDonald*, 2 Can. Cr. Cas. 504; *R. v. Beagan*, 6 Can. Cr. Cas. 56. If the justice dispensed with distress as mentioned *ante* p. 167, the justice must so state in the warrant of commitment. A warrant of commitment must shew on its face either a return of no sufficient distress, or that the distress was dispensed with under Code 744: *R. v. Skinner*, 9 Can. Cr. Cas. 558.

The costs of commitment, etc., will be, 25c. to the justice for the warrant, and mileage one way at 10c. to constable for conveying the defendant to gaol (also \$1.50 for arresting the defendant if he is at large, but not if he is already in custody; and 13c. per mile one way, to make such arrest); and the actual expenses of conveying prisoner to the gaol.

If the particular statute only authorizes costs of conveying (and not of "committing") defendant to gaol, then the justice's fee for warrant of commitment must be omitted or the warrant will be bad.

Execution of Warrant of Commitment.

The warrant is to be addressed to any or all of the constables of the county or district, and may be executed anywhere in Canada; but if executed out of the justice's county it must be first "backed" as described *ante* p. 30.

Part Payment.

If part of the money has been realized by distress or paid by defendant, it must be returned to him before a warrant to commit can be issued, as he cannot be committed for part only of the money: *Ex p. Gilbert*, 36 N.B.R. 492; *Ex p. Bertin*, 10 Can. Cr. Cas. p. 66, and notes p. 68; *Sinden v. Brown*, 17 A.R. 173. But in some special cases the particular statute relating to an offence expressly provides, contrary to the general rule, that a warrant

of commitment may be issued notwithstanding part payment; such as the provision in the Indian Act, R.S.C. ch. 81, sec. 127(4).

Acquittal; and Dismissal of Case.

If the justice finds the charge not proved he will dismiss the case: Code 726, 730. Form of Order 37; and he must, if required, give the defendant a certificate of the dismissal—Form 38: Code 733; and such a certificate releases him from all further proceedings for the same cause: Code 734. But a certificate of dismissal is only to be given when a case has been heard on its merits, and not where it is withdrawn, or dismissed on a technicality: *Reid v. Nutt*, L.R. 24 Q.B.D. 669.

The justice on dismissing the case may order the prosecutor to pay the costs, including the witness fees: Code 736; and may direct that they are to be recoverable in the same manner and by the same warrants, as penalties are recoverable under a conviction, described above. Code 737, 738, 742.

If such costs are given against the prosecutor on dismissal, the order will include an adjudication stating their amount and when they are to be paid; and also that in default of payment it is to be enforced by distress, or if that is omitted for similar reasons to those stated *ante* p. 167; or if there are not sufficient goods of the prosecutor to realize the costs, then that the prosecutor be committed to gaol for not more than one month (Code 742(2)), with or without hard labour, as the justice sees fit, unless the costs, together with costs of conveying him to gaol, are sooner paid.

The directions in the foregoing pages in regard to issuing the processes for enforcing payment of a fine under a conviction will apply to process for enforcing payment of costs by the prosecutor on dismissal—and warrants of distress (if awarded), and of commitment, will be issued and executed as above described: Code 742. The forms are given in the schedule to

the Criminal Code, Form 45, for warrant of distress, and 46 for warrant of commitment.

Place of Imprisonment on Committal.

The imprisonment, if for less than two years is to be in the common gaol of the county or district where the sentence is pronounced; or if there is no gaol there, then in the nearest one: Code 1056.

In the cases of offenders under sixteen years old, the justice may commit to a reformatory for an indefinite time, instead of other punishment, for serious offences or in the cases of incorrigible youthful offenders, or those who by reason of the neglect or vice of parents are within the scope of the law respecting juvenile offenders or neglected children: R.S.O. ch. 304; R.S.O. ch. 310; R.S.O. ch. 259.

Payment of Fine, etc., to Gaoler.

The person imprisoned for non-payment of fine or costs may at any time pay the money to the gaoler, who is to receive it and discharge the defendant, if not in custody on any other matter, and the money is to be paid to the justice who issued the commitment: Code 747(2).

Prosecutions Under the Ontario Municipal Act.

The Ontario Statute, 1903, ch. 19, secs. 704-709, provides the proceedings in prosecutions for offences against municipal by-laws; and the Criminal Code does not apply to these prosecutions. In such prosecutions there is no authority to omit recovery of fines by distress, as there is in cases under the Criminal Code; and the conviction must direct that in default of payment of the fine a distress warrant is to be issued and imprisonment in default of sufficient distress only.

Sections 711, 712, of the same Act make provisions for com-

pling the attendance of witnesses and taking of evidence in such cases.

In prosecutions under by-laws care must be taken to prove the by-laws; sec. 710(2). This may be done by the production of the original by-law—section 333—or a copy, written or printed, without erasure or interlineation, and under the seal of the corporation and certified by the clerk, or a member of the council, to be a true copy: Section 334.

Prosecutions Under Ontario Statutes Other Than the Municipal Act.

In such prosecutions the Ontario Summary Convictions Act, R.S.O. ch. 90, provides that the proceedings are to be the same as in cases under the Criminal Code, as before described; subject, however, to any special variation contained in the Ontario statute last mentioned. The proceedings generally will be the same as in cases under the Criminal Code.

Appeals from Convictions.

An appeal from the justice's conviction under the Criminal Code is to be taken to the Court of General Sessions of the Peace, if the punishment is imprisonment only; and in all other cases, *i.e.*, when a fine is imposed, an appeal lies to the Division Court of the division in which the cause of complaint arose: Code 749(a).

In the district of Nipissing the appeal is to the General Sessions for Renfrew county if the punishment ordered was imprisonment only; and in all other cases to the Division Court of Renfrew nearest to the place where the cause of complaint arose; Code 749(2).

Appeals From Convictions Under Ontario Laws.

The above provisions do not apply. Appeals from such convictions lie to the General Sessions unless the particular statute under which the conviction is made otherwise provides: R.S.O.

ch. 90, sec. 7; and the convictions, depositions and papers are to be transmitted to the clerk of the peace: Section 6.

Particular statutes, however, sometimes provide for an appeal to another Court than the General Sessions. Thus an appeal under the Ontario Liquor License Act, is to the judge of the County Court, and the depositions and conviction must be transmitted to the clerk of the latter court and not to the clerk of the peace.

So also, appeals under the Master and Servants Act are to be made to the Division Court in which the cause of complaint arose, or in which the parties complained against, or one of them resides at the time when the complaint is made, or where the parties complained against or one of them carried on business: R.S.O. ch. 157, sec. 18.

In these and other cases where the appeal is to some other court than the General Sessions, the conviction and depositions must be transmitted to the clerk of such other court.

The conviction in all cases is to be transmitted to the clerk of the court to which an appeal lies: Code 757; and the information and depositions are to accompany it: R. v. Rondeau, 9 Can. Cr. Cas. 523.

Cases Stated under Dominion Laws.

In cases under Dominion laws: Code 761-769. Upon the application of either party the justice may state a case for the opinion of the proper Court to which an appeal lies as above indicated, upon a point of law arising in the case, and which is claimed to have been erroneously decided by the justice; or upon the ground of excess of jurisdiction.

The proceedings in that event are laid down in the above sections of the Code.

The justice should not refuse to sign a "case stated" unless he is of opinion that the application is frivolous; nor can he refuse if the application is made on behalf of the Attorney-General:

Code 763. If the justice refuses to sign a "case stated" an application for an order may be made to the Court: Code 764.

Case stated in cases under Ontario law: See R.S.O. ch. 91.

Quarterly Returns of Convictions.

Justices are required, quarterly on or before the second Tuesday in March, June, September and December, to transmit to the clerk of the peace a return in the form which will be provided by L. 1 on application—Form 75 in the Criminal Code—of all convictions made by him up to the end of the previous month and of all moneys received by him and not included in some previous return: Code 1133, 1134.

In Nipissing, the return is to be to the clerk of the peace of Renfrew: Code 1133(6).

Similar provision is made for return of convictions under Ontario laws by R.S.O. ch. 93.

These returns are to include all moneys for fines payable under convictions made during any previous quarter, but not received till a later date.

If two or more justices join in a conviction they must make a joint return: Code 1133(3).

Penalty for Neglect or False Return.

Code 1134 and R.S.O. ch. 93, sec. 3, provide for a penalty of \$80 for neglect to make proper return or wilfully making a false, partial or incorrect return; or wilfully exacting or receiving improper fees: See also Ont. St., 1904, ch. 13, sec. 2.

To Whom Fines to be Paid Over.

Fines and penalties received by justices are to be paid over by them in accordance with the special direction (if any) contained in the statute under which the conviction was made.

Fines Levied Under Ontario Municipal Act.

All fines levied under the Municipal Act or by-laws are (unless otherwise specially directed by the particular clause of the statute relating to the offence) to be paid, one moiety to the informer or prosecutor and one moiety to the municipal treasurer; that is, to the county treasurer under county by-laws, or to the treasurer of the minor municipality when the offence was against the by-laws of that municipality. But if the prosecution is brought by a member of the police force or an employee of the corporation or local board of health the whole of the penalty is payable to the treasurer of the county or minor municipality whose employee the prosecutor is.

Fines Under Other Ontario Laws,

Are to be paid in the manner provided for by the particular statutes under which they are imposed, or if there is no such provision, to the Provincial treasurer: R.S.O. ch. 107, sec. 2, amended by the statutes of 1901, ch. 12, sec. 12.

Certain fines under Imperial statutes in force in Ontario are payable to the treasurer of the county (or of any city or town separated from the county) in which the conviction took place: R.S.O. ch. 107, sec. 1.

Fines for Breaches of Canadian Revenue Laws,

or for malfeasance in office by a Dominion official, or in cases in which the prosecution is taken at the instance of the Dominion Government (if the latter bears the costs of prosecution), are to be paid to the Receiver-General of Canada.

Fines Imposed Under the Criminal Code.

Fines imposed for any offence under the Criminal Code or other Dominion statute, except as above mentioned, are payable to the Provincial treasurer: Code 1036.

Fines to be Remitted to the Crown Attorney.

All fines payable to the Provincial treasurer of Ontario are required, by order of the Lieutenant-Governor in Council, to be paid by justices and sheriffs to the Crown Attorney for the county for transmission by him to the Provincial treasurer.

Fines for Cruelty to Animals.

Code 542, 543. Fines levied for this offence may be ordered by the justice to be paid, one-half to the county, town, village or township treasurer where the offence was committed, and the other half with the costs of prosecution to such other person as to the justice seems proper (e.g., to any society or persons enforcing the law): Code 1043.

Lockup Houses.

The Ontario Municipal Act, 1903, ch. 19, secs. 518-523, provides for the erection and maintenance of lockup houses. And by the statute of the late Province of Canada, 1866, ch. 51, sec. 409 (which is not repealed), a justice of the peace is authorized by warrant under his hand and seal to direct the confinement in any lockup house within his county, for any period not longer than two days, of any person charged with crime, whom it may be necessary to detain pending the hearing of the case and until he may be conveyed to jail; also for the confinement for not more than twenty-four hours of any person found in a public street or highway in a state of intoxication, or of a person convicted of desecrating the Sabbath; and generally justices may commit to the lockup any person summarily convicted by them of any offence cognizable by them and liable to imprisonment therefor under any Ontario statute or by-law. Notwithstanding these provisions the present condition of most lockup houses is such that they ought not to be used for any but the most transient purposes.

Compounding or Settling Offences.

This offence consists in any person receiving anything from

another upon an agreement, expressed or implied, not to prosecute the offender for a criminal act: *R. v. Burgess*, 16 Q.B.D. 141.

It is a serious offence against the law to make a bargain to drop, or not to bring, a criminal prosecution for a criminal offence. Such a bargain or arrangement between parties, even though not actually expressed, will be implied, if the nature of the transaction indicates that no prosecution will be brought; or, if brought, will not be proceeded with.

While reparation is a duty which the offender owes to the person he has injured, quite independently of his fear of prosecution or otherwise; and the law is not anxious to discourage reparation; yet there must be no bargain or understanding in regard to what is the clear duty of the person who has been wronged, to himself and to others, not to cover up a criminal offence.

The law must take its course; and the fact of reparation being made is one for the Court in awarding or suspending punishment, after conviction: *Jones v. Merionethshire* (1892), 1 Ch. 173; *Legatt v. Brown*, 30 O.R. 225.

By Code 729 the justice is authorized, in the cases therein referred to, to discharge the offender from the conviction, if it is the first conviction, upon reparation being made. And in other cases of mainly a private nature, such as wilful destruction of property, petty trespass, etc., there can be no objection to the charge being dropped upon compensation being made. But if the offence is of a public character or one against which the public should be protected, an indictment will lie against parties settling it: 1 Can. Cr. Cas. 316; *Archibald*, 22nd ed., 1035; *Baker v. Townshend*, 7 Taunt. 422. No settlement between parties ousts the jurisdiction of justices to proceed with a criminal case; and if a justice finds or suspects that the parties are likely to stifle a criminal prosecution, he should immediately inform the Crown Attorney, so that the public interest may be protected.

ALPHABETICAL.

SYNOPSIS OR LIST OF OFFENCES WHICH ARE THE SUBJECT OF
SUMMARY CONVICTIONS BY JUSTICES OF THE PEACE.

*One Justice has Authority to Convict for any of the Following
Offences, Except Those Where a Note is Made at
the End of the Statement of the Offence
That Two Justices are Required.*

Abandoned Mine.

Neglect to Guard. See Neglect.

Advertisements or Circulars Like Bank Notes, Using.

Code 551.

Two justices required.

Automobiles.

See Motor Vehicles.

Agricultural Society Exhibitions.

Ont. St. 1906, ch. 16, secs. 26, 29.

Appointment of constables by a justice of the peace on the request of the Society; and the powers of such constables and of Provincial constables at exhibitions are provided for in this statute.

Offences Against this Statute.

Obstruction of Officers: Sec. 27.

A.B., at _____, on _____, did unlawfully and wilfully hinder (or obstruct) C.D., an officer of the _____ Agricultural

Society in the execution of his duty as such (or) gain admission to the ground of the said society contrary to the rules of the said society.

Entering Horse in Wrong Class or by False Name: R.S.O. ch. 254.

A.B., at _____, on _____, did on the _____ day of _____, at _____, unlawfully enter for competition for a purse offered by the _____ Agricultural Society at its exhibition where the contest was to be decided by speed a horse in a class different to which the said horse properly belonged by the rules of the said Society in reference to the said contest.

Gambling Devices, etc., at: Sec. 28; Ont. Stat. 1898, ch. 31.

Algonquin Park Act, Offences Under.

R.S.O. ch. 46.

Using Firearms in Park: Secs. 8-16, 22.

Fishing in Without a License: Sec. 9(2)-16, 22.

Or with Net, Trap, Spear or Night Line.

Cutting Wood or Timber on: Sec. 13.

Sale of Liquor In: Sec. 15.

Anatomy Act, Offences Under.

R.S.O. ch. 177; Ont. Stat. 1899, ch. 11, sec. 37.

Animal, Selling Diseased.

R.S.C. ch. 75, sec. 38.

A.B., on _____, at _____, did unlawfully sell (or dispose of) to C.D. (or offer, or expose for sale, or attempt to dispose of)

• • • an animal, to wit, a heifer (or as the case may be) infected with or labouring under a certain infectious (or contagious) disease, to wit, *name the disease*: (or • • • the meat, or skin, or hide, or horns, or hoofs, or other part, stating what, of an animal, to wit, a heifer infected with or labouring under a certain infectious disease, stating what, at the time of its death).

See also sec. 35-46 as to other offences.

Also see R.S.C. ch. 75, secs. 36-40, 48.

Two justices of the peace required.

See also offence of selling things unfit for food, under "Food."

Animals, Diseased.

R.S.O. ch. 273.

The following are the proceedings to be taken in the order here given.

Notice by Answer to Justice: Sec. 2(1).

I hereby notify you that it appears to me that a horse (or other animal, describing it) now in the possession of C.D., of the _____ of _____, and now being at (describe locality where animal is) is diseased, that is to say, is affected with glanders or farcy.

Dated at this 190 .
To. G.H., Esq., J.P. A.B.
(Address) of

Notice by Justice to Veterinary: Sec. 2(1).

Having been notified in writing by A.B., of _____, that a horse (or other animal, describing it) now in the possession of C.D. of the _____, of _____, and which is now at (state where the animal is) is diseased:

I hereby direct you to inspect the said animal as required by the statute in that behalf.

To E.F., Veterinary Surgeon.

(Address.)

G.H., Justice of the Peace county

Report to Justice by V. S.: Sec. 3.

I beg to notify and report to you that having this day inspected pursuant to your directions a horse (*or other animal, describing it*) in the possession or charge of C.D. of the , of , I find that the said animal is diseased, that is to say, is affected by glanders or farcy.

Dated at this 190 .

To G.H., Esq., J.P.

(Address.)

E.F., Veterinary Surgeon.

(Address.)

Notice by Veterinary to Person in Charge of Animal: Sec. 3.

Take notice that having this day inspected by order of G.H., Esq., a justice of the peace for the county of , a horse (*or other animal describing it*) in your possession or charge I find that the same is diseased, that is to say, affected with glanders or farcy.

Dated at this 190 .

To C.D., of (residence)

Signed E.F. Veterinary

Surgeon (address).

Justice's Order Thereon.

To I.J., a constable of the county of

Whereas I was on the day of , 190 , duly notified under the statute in that behalf that a horse (*or other animal, stating what*) was diseased and affected with glanders or farcy; and I did thereupon notify E.F., a veterinarian, to inspect the said animal, and the said E.F., having this day reported to me that he has found the said animal to be diseased as aforesaid:

You are hereby ordered to seize and detain the said animal and to cause the same to be kept in some place where it will not be brought into contact with or be in danger of transmitting the said disease to other animals until the case has been determined by the court.

Dated at this 190 .

G.H., a justice of the peace in
and for the county of .

Summons to Person in Charge of Animal: Sec. 6.

Canada.

Province of Ontario.

County of .

}

To. C. D. of .

Whereas it appears by the report this day made to me a justice of the peace in and for the county of , by , a veterinarian, that a horse (*or state what animal*) now in your possession *or* charge is diseased, that is to say, is affected with glanders or farcy.

These are therefore to command you in His Majesty's name to be and appear before G.H. and L.M., two of His Majesty's justices of the peace in and for the county of , or such other justices as shall then be there at the in the of in the county of , on the day of , A.D. 190 , at o'clock in the noon to shew cause why the said animal should not be destroyed. Herein fail not.

Given under my hand and seal this day of , A.D. 190 , at , in the county aforesaid.

G.H. (Seal)

Justice of the peace in and
for the county of .

The case will then proceed before two justices as in summary conviction cases as described *ante* p. 146; and upon "the evidence

of one or more competent veterinarians" (sec. 8) that the animal is diseased as above mentioned and other evidence taken in the usual way the following order is to be made:—

ORDER FOR DESTRUCTION OF ANIMAL.

Canada.

Province of Ontario.

County of .

Be it remembered that on the day of a notice was given by A.B. to G.H., a justice of the peace for the county of , that a horse (*or state what animal*) then in the possession of C.D., of at , the said of was diseased and affected with glanders or farcy; and thereupon the said G.H. did duly direct E.F., a veterinarian to inspect said animal; and afterwards on the day of , 190 , the said E.F. duly reported to the said G.H. in writing that said animal was so diseased; whereupon the said G.H. duly issued a summons to the said C.D. as required by the statute in that behalf:

And now on this day, to wit, on the day of , 190 , at , the parties aforesaid appear before the undersigned, two of His Majesty's justices of the peace in and for such county of , and having heard the matter of such complaint and it appearing by the evidence of , a competent veterinarian (*or veterinarians if more than one*), that the said animal so in the possession of C.D. as aforesaid is diseased and affected with glanders or farcy.

We do order and adjudge that within twenty-four hours from this time, to wit, from the hour of o'clock noon of this present day, the said C.D. shall kill and bury (*or burn*) or cause to be killed and buried (*or burned*) the said animal.

And we do further order and adjudge that the said C.D. do pay to the said A.B. the sum of for his costs in this

behalf. And in default of the said C.D. killing and burying (or burning) the said animal or causing the same to be so killed and buried (or burned) within the time aforesaid we do further order and adjudge that the said C.D. for his said default shall forfeit and pay the sum of _____, to be paid and applied according to law. And if the said several sums of money or either of them is not paid on or before the _____ day of _____, we do order and adjudge that the same be levied by distress (*then proceed as in Form 31 in the Criminal Code*):

G.H. (Seal)

L.M. (Seal)

Justices of the peace in and for
the said county of _____.

No means are provided in the Act under consideration for enforcing the payment of the penalty; but it is provided by R.S.O. ch. 90, sec. 2(3), that the means for enforcement of payment of penalties under the Criminal Code shall be adopted. These are provided by section 739 of the Criminal Code.

The order in regard to costs is also authorized by R.S.O. ch. 90, sec. 4(1)(3).

If the animal is not killed and buried as ordered a warrant of distress for the fine will be issued and if no sufficient distress is found it will be followed by a warrant of commitment for the period ordered unless the animal is sooner disposed of as directed.

The forms of distress and commitment, Forms 40 and 44 in the Criminal Code may be used, making necessary changes.

If a fine is levied it goes to the municipality: Sec. 8(1).

The justices may give the veterinary or veterinaries acting in the matter an order on the treasurer of the municipality for witness fees and remuneration not exceeding four dollars for each day the veterinary was engaged in making inspection and report and in attendance at Court: Sec. 11.

FORM OF ORDER ON TREASURER.

To the treasurer of the town (or as the case may be) of
pay to E.F. the sum of dollars for his witness fees and
other remuneration for his services in inspecting, reporting and
attending court to give evidence in the case of A.B. against C.D.
for having in his possession an animal affected with glanders or
farcy.

Dated , 19 .

G.H. (Seal)

L.M. (Seal)

Justices of the peace for
the county of .

Add to the veterinarian's fees the cost of horse hire or other
travelling expenses if such was necessary in travelling to inspect
the animal and in attending court.

See also Dom. Stat. R.S.C. ch. 75.

Animals.

Cruelty to or Abusing; Code 542. See Cruelty to Animals.

Two justices required.

*In Transit on Railways, etc., not Unloading for Rest, Food,
etc.:* Code 544.

Animal, Neglect to Bury Dead Animal.

See Public Health Act, also Municipal By-law.

Apprentices and Minors, Offences by or Against.

R.S.O. ch. 161.

Architect, Practising Without Authority.

R.S.O. ch. 181.

(Similar form to that under "Medicine.")

Articles of the Peace.

Code 748(2)(3).

Any person being threatened with personal violence to himself or his wife or child, or with injury to his property, may lay an information before a justice in the Form 49 to the Criminal Code, and the justice may summon or issue a warrant to arrest the defendant to answer to the complaint.

The proceedings are to be the same as in the case of any other charge laid against an offender; witnesses may be summoned and examined and the parties heard and the matter dealt with in the manner described in Chapter V.; and if the justice is satisfied that the complainant has reasonable grounds for his fears, he may make an order that the defendant enter into a bond with one or more sureties to be of good behaviour and keep the peace. See the form of recognizance, 49 in the Criminal Code.

If the defendant does not furnish security as ordered the justice may issue a warrant committing the defendant to gaol: Form 50 in the Criminal Code.

Under the first clause of Code 748, a justice before whom a person is convicted of the class of offences there mentioned, may without any information or complaint of threats, and in addition to or in lieu of punishment for the offence of which he has been convicted, make an order that the defendant furnish securities to keep the peace and enter into the recognizance above mentioned, and in default may commit him to gaol as above stated.

See also ante p. 166.

Assault.

Common: Code 290, 291.

A.B., at _____, on _____, did unlawfully assault (or in the case of assault and battery, assault and beat) C.D.

Unreasonable Chastisement of Minor: Code 63, 290, 291.

A.B., at , on , did unlawfully assault, beat and ill-use C.D.

Assaults on Workmen.

Code 501. *See* Workmen.

Two justices required.

Assembly, Unlawful.

See "Riotous Acts."

Bank Note, Printing Circulars, etc., to Imitate.

Code 551.

A.B., at , on , did unlawfully engrave (or print, or make, or execute, or circulate, or use, stating how) a certain business card (or notice, or placard, or circular, or hand bill, or advertisement) in the likeness or similitude of a bank note of the bank (or of a share, or debenture of the bank, or a debenture of the government of of).

Two justices required.

Bawdy House, Frequenting.

See Disorderly House.

Barberry Shrub, Planting, etc.

Ont. St. 1900, ch. 48; 1902, ch. 38, sec. 1.

A.B., at , on , did unlawfully plant (or sell, or does unlawfully cultivate) the shrub known as the barberry shrub.

Selling Bess with Foul Brood: R.S.O. ch. 283, sec. 5.

Omitting to Give Notice of Foul Brood: R.S.O. ch. 783, sec. 10.

Begging.

Code 238(d). *See Vagrancy.*

Betting.

See Gambling in List of Indictable Offences. Also Gaming House.

Billiard Rooms.

Unlicensed. See R.S.O. ch. 247.

Minors, Admitting to: R.S.O. ch. 247.

A.B., at _____, on _____, being there and then the keeper of a licensed billiard, or pool, or bagatelle room, for hire or gain, did unlawfully admit C.D., a minor, who was then under the age of sixteen years, to the said billiard room. (or did unlawfully allow C.D. (etc., as above) to remain in the said billiard room), without the consent of the parent, or guardian of the said C.D., he, the said C.D., then not being a member of the family, or the servant of the said A.B., (or he, the said C.D., not then going to the said billiard room for the purpose of loitering, or to play billiards therein), and the said A.B., not then having reasonable cause to believe that such consent had been given by the parent or guardian of the said C.D., or that the said C.D. was not under the age of sixteen years.

Birds, Insectivorous, Protection of.

R.S.O. ch. 289.

Killing or catching any kind of wild bird whatever is unlawful, except hawks, crows, blackbirds and English sparrows; and

also the birds specially mentioned in the Ontario Game and Bird Protection Act, during the close season: Secs. 2, 3. And the destruction or having in possession their eggs is also unlawful: Sec. 4.

But robins may be destroyed by a person to protect the fruit on his own premises: Sec. 2(2).

A permit may however be issued by the chief game warden to certain persons mentioned in section 6.

Fines imposed under this Act are to be paid to the prosecutor unless collusion between him and the offender is suspected: Sec. 8(2).

Births, Deaths, etc., Failing to Register Such.

R.S.O. ch. 44, secs. 15, 29.

A.B., being the father of a child born at the of , on or about the day of , did unlawfully neglect to report such birth within thirty days from the date of the said birth.

(Similar forms for neglect to report death before interment: Sec. 25; or marriage within thirty days: Sec. 20; or making false statements in report: Sec. 28; or other offences: Sec. 30.)

Breach of the Peace.

See Articles of the Peace; Riotous Acts, etc.

Butter and Cheese, Frauds in Sale of.

R.S.O. ch. 251.

By-laws, Municipal, Breaches of.

Con. Municipal Act, 1903, ch. 19.

One justice has jurisdiction to convict for all breaches of this Act and of municipal by-laws passed under it; except that where

there is a police magistrate for the municipality a justice has no authority without the magistrate's request: Secs. 476, 705.

All penalties are enforced by distress, or if no sufficient distress, by imprisonment: Secs. 705, 706.

Form of conviction is given in section 707.

Fines are to be disposed of in the way provided by section 708.

Canned Goods Act, Offences Against.

R.S.C. ch. 134.

Cattle in Transit, Not Unloading for Rest, Feed and Water.

Code 544, 545.

Cheese and Butter.

Fraud in Manufacture of: R.S.O. ch. 251.

Interfering with Testing of the Milk: Secs. 4, 5.

Supplying Cheese or Butter Factory with Milk from Which Cream has Been Taken, Without Notice: Sec. 6.

or

Keeping Back Part of the Milk, Without Notice: Sec. 7.

or

Supplying Tainted Milk to Factories: Sec. 8.

FORM OF CHARGE UNDER SECTIONS 6, 7, OR 8.

A.B., at _____, on _____, did unlawfully supply deteriorated milk (see section 9(41)) to the _____ cheese (or butter) factory without notifying in writing the owner or manager of the said _____ factory thereof as required by the Act to Prevent Fraud in the Manufacture of Cheese and Butter.

Penalty is to go one half to complainant and one half to the factory: Sec. 10.

Two justices required.

Children.

Employing in Factories. See Factories Act.

Employing in Shops. See Shops Regulations.

Neglecting: R.S.O. ch. 259.

Child Immigration: R.S.O. ch. 262. See also under Minors.

Coin.

Uttering Defaced: Code 566.

A.B., at _____, on _____, did unlawfully utter a certain coin which had theretofore been unlawfully defaced by having stamped thereon certain names or words, to wit (*state the words*).

Two justices required.

The consent of the Attorney-General is necessary before prosecution: Code 598.

Uttering Uncurrent: Code 567.

Making or Importing Uncurrent Copper Coin: Code 554.

Cock-pit, Keeping.

Code 543.

At _____, on _____, A.B. did unlawfully keep (*or allow to be kept*) a cockpit on premises belonging to (*or occupied by*) him (*describe where*).

Cock or Dog Fighting, etc.

Code 542(c).

At _____, on _____, A.B. did unlawfully encourage (or aid, or assist, *describing in what manner*) at the fighting (or baiting) of any dog (or cocks, or bulls, or bears, or badgers, or other animal, *describing it or them, or a dog and a bear, or as the case may be*).

Cruelty to Animals.

Code 542(a).

At _____, on _____, A.B. did unlawfully, wantonly, cruelly, and unnecessarily beat (or bind, or ill-treat, or abuse, or over-drive, or torture) a certain animal, to wit, a horse (or steer, or dog, or any domestic animal, *describing it*).

or 542(b).

While driving a horse (or steer, or heifer, or other animal, *describing it*) by negligence (or ill-usage) in the driving thereof was unlawfully the means whereby damage (or injury) was done to the said (animal *describing it, and describing the negligence or ill-usage*).

Two justices required in the last four offences.

Constable, Obstructing, etc.

Code 169.

A.B., at _____, on _____, did unlawfully resist (or wilfully obstruct) C.D., who was then and there a peace officer, to wit, a constable of the county of _____ in the execution of his duty as such, to wit, in executing a lawful warrant of arrest against E.F.

or

Did unlawfully (or wilfully obstruct) one E.F., who was then

and there lawfully aiding C.D., a peace officer (*proceed as in the preceding form to the end*).

This offence is either indictable or may be tried by two justices.

Contagious Diseases.

Of Animals. See Animals.

Public Health Act: R.S.O. ch. 248.

Cullers of Sawlogs.

See Sawlog Cullers.

Damage to Property.

See Wilful Injuries.

Dentist, Practising Without License.

R.S.O. ch. 178, secs. 26, 27. See Form under "Medicine."

Desertion of Wife.

R.S.O. ch. 167. See "Husband and Wife."

Desertion, Persuading Soldier or Seaman to; Code 82.

A.B., at _____, on _____ he not then being himself an enlisted soldier in His Majesty's service (or a seaman in His Majesty's naval service) did unlawfully persuade (or procure, or endeavour to procure) C.D. then and there being a soldier in His Majesty's service (or a seaman in His Majesty's naval service) to desert from and leave such service by (*describe the means used*).

This offence is either indictable or triable summarily before two justices.

Disorderly Conduct or Vagrancy.

See Vagrancy.

Disorderly House.

Frequenter of Gaming House: Code 229.

A.B., at , on , did unlawfully play (or look on while another person was playing) in a common gaming house at (*describe locality*).

Two justices required.

See Disorderly House, Keeper of, in List of Indictable Offences.

Obstructing Police From Entering: Code 230(a)(b).

A.B., at , on , did unlawfully prevent C.D. (or obstruct, or delay C.D. in) entering a disorderly house (or a room constituting a part of a disorderly house) at (*describe locality*), he the said C.D., being then and there a constable of the said county of (or a police officer of the said city of), and being then and there duly authorized to enter the

HOUSE

or Code 230(c).

By a bolt (or chain, or other contrivance, stating it) did unlawfully secure an external (or an internal) door of a common gaming house situate (*describing where*) for the purpose of preventing C.D. from (or obstructing, or delaying C.D. in) entering the said common gaming house (or room being a part of the said house) he, the said C.D., being then and there a constable of the said county of (or a police officer of the said city of), and duly authorized to enter the said house (or room).

NOTE.—Two justices are required to try the above cases.

Disturbing Public Meeting or any Assemblage of Persons Met for any Moral, Social, or Benevolent Purpose.

Code 201.

That A.B., at _____, on _____, did wilfully disturb, or interrupt, or disquiet, an assemblage of persons then met together at (name and describe the church, hall, or house where the meeting was), for religious worship, or for a moral, or social, or benevolent purpose, by profane discourse, or by rude or indecent behaviour, or by making a noise, (describe the conduct) within the said place of such meeting, (or so near the said place of such meeting as to disturb the order or the solemnity of the said meeting), then and there being so held.

Dogs, Recovering Damages from Owner of Dog Which has Worried Sheep.

R.S.O. ch. 271, sec. 15.

A.B., on _____, at _____, was the owner of a certain sheep or lamb, which was then and there unlawfully killed by a dog of which C.D. was then and there the owner (or keeper) the said sheep or lamb being of the value of _____ dollars, and the said A.B. claims to recover from the said C.D. the value of the said sheep or lamb.

In case there were two or more dogs owned by different persons the justice may apportion the damage: Secs. 5, 15(2).

An appeal lies to the Division Court, where the sheep was killed or where the owner of the dog resides: Sec. 15(6).

The convictions and proceedings will be sent to the clerk of that court.

There can be no claim for sheep killed on the highway: Sec. 20.

Neglect of Owner to Destroy Dog After Notice of Injury:
Sec. 16.

Keeping or Harboursing a Dog Which Has Worried Sheep:
Secs. 11-13.

Making False Statement to Assessor by Owner of Dog: Sec. 4.

Justices are to make returns of convictions to the clerk of the municipality besides the usual return to the clerk of the peace.

Driving Furiously.

See under Indictable Offences: There is generally a municipal by-law against this, under which a summary conviction can be made.

Druggist, Practising as Without Diploma.

See Pharmacy.

Drunk and Disorderly.

Code 238(f). Also see Municipal By-law.

Engineer, Operating Stationary Engine Without Certificate.

Ont. St. 1906, ch. 26, 27.

Factories Act, Ontario.

Offences Against: R.S.O. ch. 256; Ont. Stat. 1901, ch. 35; 1902, ch. 36.

Employing Children in Factories: Secs. 3, 5.

A.B., at _____, on _____, did, being then and there the employer in charge of a factory within the meaning of the Ontario Factories Act, did unlawfully employ C.D., a child, being a boy (or girl) under the age of fourteen years of age in the said factory.

For other offences see the various sections of the above Act and use similar forms.

Two justices required: Sec. 46.

For provisions as to description of offence see section 47(2-5).

The information must be laid within two months: Sec. 47.

Fine is to be paid to the factories inspector.

Fire Escape.

Hotelkeeper, Not Providing: R.S.O. ch. 264.

A.B., at _____, on _____, he being then and there the owner or lessee, or proprietor) of an hotel known as _____, which exceeded two storeys in height did not erect or cause to be erected and maintained at least one permanent outside stairway or ladder from the several landings or floors above the first storey thereof of the kind and description required by section 2 of the Act for the Prevention of Accidents by Fire in Hotels and Other Like Buildings.

Keeping a proper rope in each bedroom is sufficient: Sec. 3(2); or the fire escape known as "The Natural Drop Fire Escape," described in Ont. St. 1900, ch. 44.

Factory Owner, Not Providing: Ont. Stat. 1902, ch. 36.

Fire.

Negligently Setting Out, Within Districts Proclaimed by the Lieutenant-Governor: R.S.O. ch. 267.

Setting Out Fire Between April 1st and November 1st Without Taking Reasonable Precautions: Secs. 5, 6.

Dropping Burning Match, Lighted Cigar, Pipe Ashes, etc., Within Fire District: Sec. 7.

Engine Driver on Railway not Seeing that Engine Provided With Proper Appliances to Protect from Fire while Passing Through Fire District: Sec. 10.

Prosecutions must be within three months: Sec. 12.

Fire Arms, Discharging so as to Disturb.

Code 238(g).

A.B., at , on , did unlawfully by discharging fire-arms in a street (or highway) wantonly disturb the peace and quiet of the inmates of the dwelling-house of C.D., situated near the said street (or highway).

See also municipal by-laws against discharging fire-arms on the public streets.

Fisheries Act.

Ont. St. 1900. ch. 50.

Trespassing on Land Covered by a Fishing Lease: Sec. 25.

A.B., at , on , did unlawfully enter upon or pass over the land described in, and the subject of a fishing lease in favour of C.D. being (describe the locality trespassed on) without the permission of the said C.D. or his representative.

Fishing Within the Fishing Limits of Another Person: Sec. 26.

Obstructing or Interfering With by Violence or Threats, or Giving False Information to Fishery Overseer, When in Discharge of His Duty: Sec. 30.

Neglecting to Move Nets as Directed by Fishing Overseer After Forty-eight Hours' Notice: Sec. 34, amended by Act of 1901, ch. 37, sec. 9.

Shipping or Transporting Out of a Province Salmon Trout, Lake Trout or White Fish, Weighing Less Than Two Pounds: Sec. 39.

Transporting Out of Province Fish Caught in Provincial Waters Out of Season: Sec. 40.

Catching Sturgeon Without License: Ont. St. 1901, sec. 14.

Catching More than Twelve Bass or Twenty Pickerel or Four Maskinonge in One Day by Angling: Ont. St. 1900, ch. 50, sec. 46.

Catching More than Fifty Speckled Trout or More Than Fifteen Pounds in All: Sec. 47.

Catching Speckled Trout Between Sept. 1st and May 1st, Inclusive: Sec. 47.

Not Returning to the Water Bass Less Than Ten Inches or Speckled Trout Less Than Six Inches, or Maskinonge Less Than Eighteen Inches in Length: Sec. 48.

Non-resident Tourist or Summer Visitor Catching More Than Ten Lake Trout: Sec. 49.

Catching Lake Trout or Whitefish Under Two Pounds Undressed or One and Three-quarters Pounds Dressed, or Sturgeons Less Than Ten Pounds Dressed: Sec. 50.

Fishing In Lake Nepigon, River Nepigon or Tributaries Without Permit: Sec. 51.

Penalties under above Act: Sec. 53. In default of immediate payment imprisonment, not distress.

Information must be laid within three months: Sec. 59(1). Fines are to be paid one-half to the prosecutor and one-half to the fisheries commissioner: Secs. 64, 66.

The following are offences under R.S.C. ch. 45:—

Catching Brook Trout Between Sept. 15th and Jan. 1st: Sec. 24(d).

Catching Salmon Trout Between Oct. 1st and Dec. 1st.: Sec. 24(e).

Catching or Having Whitefish Between the First and Tenth Nov. Inclusive: Sec. 31(a).

Not Providing Fish-ways: Sec. 46.

For other offences under this act see sections 71-95. The fine under the above Dominion Statute is to be paid one-half to the prosecutor and one-half to the Crown: Sec. 104.

Food.

See Canned Goods Act.

Offering for Sale Things Unfit for: Public Health Act, R.S.O. ch. 248, secs. 108, 109; sec. 11 of by-law at the end of above statute.

A.B., at _____, on _____, did unlawfully offer for sale as food a diseased animal (or certain meat, or fish, or any of the articles mentioned in the above statute or by-law) which by reason of disease (or adulteration, or impurity, or any other cause, stating what) was then unfit for use.

The above by-law is by section 122 of the statute declared to be in force in every municipality.

Two justices are required to try this case.

See, also Health Laws, post p. 211; also Animal, Selling Diseased, ante p. 186.

Forest, Wilful Injury to Dominion Forest Reserve or Park.

R.S.C. ch. 55, sec. 225.

Two justices required.

Fruit, Marking and Fraud in Sale of.

R.S.C. ch. 85; R.S.O. ch. 253.

Game Protection Laws.

Offences Against: Ont. Stat. 1900, ch. 49; amended by Stats. 1902, ch. 39; 1904, ch. 28; 1905, ch. 33.

Non-resident of Ontario, Hunting Without a License: Ont. Stat. 1900, secs. 3, 29(1).

A.B., at _____, on _____, he not then being a resident of and domiciled in Ontario, did unlawfully hunt certain game, birds (or animals), to wit, wild ducks (or deer, or as the case may be) without having first obtained the license therefor required by the Ontario Game Protection Act.

Deer Hunting Between 15th Nov. and 1st Nov. Following:
Secs. 4(1), 29(1).

A.B., at _____, on _____, did unlawfully hunt deer during the time prohibited in that behalf by the Ontario Game Protection Act.

Deer, Moose, Reindeer, or Caribou Hunting Without a License: Sec. 8(1).

Hunting Cow Moose, or Young Moose or Caribou Under One Year Old: Sec. 8(2).

Killing More Than Two Deer, or One Bull Moose, or One Bull Caribou, in a Season: Sec. 8(3).

*Killing Deer in Water or Immediately After Coming There-
from (in Indian Peninsula, county of Bruce only):*
Sec. 8(4).

Hunting by Crusting or Yarding: Sec. 8(5).

*Hunting Deer With Dogs or Allowing Hunting Dog Loose in
Close Season:* Sec. 8(6).

*Hunting Ducks From Sailboat, or From Yacht or Launch
Propelled by Power; or With Swivel Gun:* Sec. 9.

Using Poison: Sec. 10.

*Trapping Game; or Setting Nets or Barbed Lines, Except for
Beaver, Otter or Muskrats:* Sec. 10(2).

*Shooting Game Bird Between Half an Hour After Sunset and
Half an Hour Before Sunrise:* Sec. 11.

Hired Hunters: Sec. 12.

Destroying or Having Game Birds Eggs: Sec. 13.

*Carrying Gun, etc., and Being Masked or Disguised Near
Game Preserve:* Sec. 14.

Trespass While Hunting: Sec. 20.

Failure to Produce License on Demand by any Person: Sec.
25(2).

*Hunting Wild Geese or Swans Between 1st May and 15th
Sept.:* Sec. 4(4c).

*Hunting Ducks or Water Fowl Between 15th Dec. and 1st
Sept. following:* Sec. 4(4d).

Penalties and Application of Same: Sec. 29.

Penalties are Enforceable by Imprisonment (not Distress):
Sec. 31(6).

Prosecutions Must be Within 3 Months: Sec. 31.

Parties Charged not to be Taken Before a Justice More Than 10 Miles Distant, Except as Stated: Sec. 31(2).

The Form of Charge to be Drawn up in the Words of the Section Violated: Sec. 31(3); Giving Name or Description of Offender With Time, Place and Circumstance of Offence.

One justice or game warden has jurisdiction in all above cases.

Hunting Snipe, Rail, Plover, or Waders Between 15th Dec. and 15th Sept. Following: Sec. 4(4e).

Hunting Muskrats Between 1st May and 1st Jany. Following: Sec. 5(2).

Shooting Muskrat, or Breaking Muskrat House During April: Sec. 5(3).

As to exceptions see above section.

Hunting on Sunday: Sec. 6.

Being Possessed of Game in Close Season, Except as Stated: Sec. 15(1).

Selling or Buying Game Without a License, Except as Stated: Sec. 15(2).

Hotel or Restaurant Supplying Game at Meals for Pay During Close Season: Sec. 15(3).

Exporting Game in Close Season, Except as Provided in this Section: Sec. 16.

Hunting Beaver or Otter Before 1st Nov., 1910: Sec. 5(1); as amended in 1905.

Hunting in Rondeau Park: Sec. 17.

Hunting Grouse, Partridge, Woodcock, Black or Grey Squirrels, or Hares Between 15th Dec. and 15th Sept. Following: Sec. 4(4a).

Hunting Quail or Wild Turkeys Between 1st Dec. and 1st Nov. of Following Year: Stat. of 1902, ch. 39, sec. 2(b).

or

Hunting Moose, Caribou, South of Main Line of C.P.R., Between Mattawa and Manitoba, Between 15th Nov. and 1st Nov. Following; or North of Above Limit Between 15th Nov. and 16th Oct. Following: Stat. of 1904, ch. 28, sec. 1(2).

Hunting Capercalzie Prior to 15th Sept., 1909; Sec. 2.

Carrying Gun in Tamagamie Forest Reserve in Close Season: Stat. of 1905, ch. 33, sec. 4.

Common Carriers Having or Transporting Game Without Coupon and Affidavit Attached, After Close Season: Stat. of 1900, amended in 1905, ch. 33, sec. 5(1).

Gaming House, Looking on or Playing in.

Code 229.

A.B., at , on , did unlawfully play (or look on while certain persons unknown were playing) in a certain common gaming house at (describing where).

Two justices required.

Garden, Destroying.

See Wilful Damage.

Health Act, Offences Against.

See Public Health Act: R.S.O. ch. 248.

Horses, Glandered.

R.S.O. ch. 273; R.S.C. ch. 75. *See Animals Diseased.* *Sec.*, also, Dom. St. 1899 as to regulations for preservation of health on public works.

Highway.

Disobeying Regulations for Use of: R.S.O. ch. 236; Ont. St. 1900, ch. 40.

Person Driving and Not Turning Out to the Right to Enable Person Meeting Him to Pass: Sec. 1(1).

Or to Allow Person on Bicycle to Pass: Sec. 1(2).

Or to Allow Another to Pass When Overtaken: Sec. 2(1).

Not Turning Out to the Left When Overtaking and Passing Another Vehicle: Sec. 2(2).

Bicyclist or Person Driving and Overtaking Another Not Giving Audible Warning Before Attempting to Pass: Sec. 2(4).

Person With Heavy Load, Not Turning Out or Stopping and Assisting Another to Pass: Sec. 3.

Driver of Vehicle Being Too Drunk to do so With Safety: Sec. 4.

Racing and Furious Driving or Shouting or Using Blasphemous or Indecent Language: Sec. 5.

Driving Sleigh Without Bells: Sec. 6.

Driving Over Bridge More than Thirty Feet Long Faster Than a Walk if Legible Notice is Conspicuously Placed Thereon: Secs. 8, 10.

Driver of Traction or Portable Engine Meeting Horse Vehicle and Disobeying Regulations: Ont. St. 1900, ch. 40, sec. 2.

Sleigh Runners Less than 4 Feet Apart: Ont. St. 1905, ch. 13, sec. 29.

Husband and Wife, Desertion by Husband, Order for Maintenance.
R.S.O. ch. 167.

A.B. is a married woman deserted by her husband C.D., who being able to maintain his said wife A.B., has unlawfully refused and neglected so to do and has deserted her at the _____ of _____ in the county of _____, on or about the _____ day of _____; and the said A.B. applies for an order that the said C.D. shall pay to her a weekly sum for her support and that of her family.

Two justices required.

The proceedings to enforce payment of amount ordered are described in section 3, and must be closely followed.

The order can only be enforced by distress and not by commitment.

See, also, Neglect to Supply Necessaries.

Ice, Leaving Unguarded Holes in.

Code 287. *See Neglect.*

Indecent Theatrical Performances.

Code 208.

A.B., at _____, C. _____, he being then and there the lessee (or manager, or person in charge) of a theatre known as the _____ opera house situated in the said _____ of _____, did unlawfully give (or allow to be presented, or allow to be given) therein an immoral (or indecent, or obscene) play, or concert, or performance, or representation.

NOTE.—This offence may be treated either as indictable; or it may be tried summarily by one justice.

Indecent Act.

Code 205(a).

A.B., at _____, on _____, unlawfully and wilfully in the presence of one or more persons did an indecent act (*describing it*) * at _____, the same being a place to which the public have (or are permitted to have) access.

or 205(b).

* Intending thereby to insult or offend C.D.

Two justices required.

Indian Act.

Offences Under: R.S.C. ch. 81.

Trespass by Outsider, Cutting Tree or Sapling on Indian Reserve: Sec. 127.

Indian of, Band, Trespassing on Another's Land and Cutting Tree or Removing Stone, Soil, etc.: Sec. 128.

Buying or Acquiring a Present Given to Indian: Sec. 133.

Supplying Liquor to Indian, etc.: Secs. 135, 136, 140, 141.

Indian Making or Having Liquor in His Possession: Secs. 136, 137.

Two justices or Indian Agent have jurisdiction in the above offences.

Trespass by Outsider on Indian Reserve, etc.: Secs. 33-37, 124-126.

Drunken Indian, etc.: Secs. 139, 144.

Indian Refusing to Give Information from Whom Liquor Obtained: Sec. 146.

Celebrating Certain Indian Festivals: Sec. 149.

One justice or Indian Agent has jurisdiction in these cases.

Inland Revenue Act, Breaches of.

R.S.C. ch. 51.

Brewer, distiller or tobacco or cigar manufacturer not keeping license posted up: Sec. 99.

Two justices: Sec. 132(b).

Insane and Dangerous Person.

Ont. St. 1906, ch. 60.

A.B., at _____, on _____, is insane and dangerous to be at large.

NOTE.—*The proceedings to be taken are described and the forms will be found in the above statute; blank forms will be furnished by the clerk of the peace.*

Insurance Company.

O: *Mutual or Assessment System, Using Policy, etc., Not Marked "Assessment System"*: R.S.O. ch. 24, secs. 61, 62.

Carrying on Business Without a License: Secs. 66-68.

Limit of time for prosecution, one year.

Two justices required.

Inspection and Sale of Staple Commodities.

R.S.C. ch. 85.

Offences under sections 36, 39, 40, 41, 102, 104, 105, 108, 304, 305, 306, 307 and 308 must be tried by two justices.

Offences under section 103 may be tried by one justice.

Offences under sections 106, 107, 235 are indictable, and justices can only hold preliminary enquiries.

Junk or Marine Stores.

Dealer Buying from Person Under 16 Years Old; or From Any Person Between Sunset and Sunrise: Code 431.

Juvenile Offenders, 16 Years Old or Under.

Code 800-821, 644; R.S.O. ch. 259 and 304.

Theft by Juvenile Under 16: Code 802.

The proceedings are fully set out in sections 800-821 of the Criminal Code.

Two justices have jurisdiction to try such case summarily and convict, on proof of guilt, unless the offender or his parent or guardian objects as provided by section 807. If such objection is made the justice may hold a preliminary enquiry and commit for trial.

Justices have no jurisdiction to try summarily any case of theft except those against juvenile offenders under these sections of the Code, and except those mentioned *post*, p. 258.

As to liability of juveniles to punishment for crimes, see *ante* p. 10.

On a youthful offender being brought before a justice the parent or guardian should be notified and also the executive officer of the Children's Aid Society if one has been organized in the county, so that the child's rights may be protected: Code 779.

Trials of juveniles must be held without publicity and separately and apart from other accused persons, and at suitable times to be appointed for that purpose: Code 644.

Young offenders under fourteen years old should never be placed in the police cells or in gaol with any other prisoners; nor those over 14 years old, if it is possible to arrange for their safe keeping elsewhere or if they can furnish sufficient bail.

In dealing with the cases of juveniles, reference should be had particularly to the provisions of the above sections of the Crim-

inal Code; and also to the above mentioned Ontario statutes, in which provision is made in regard to juvenile offenders against Ontario laws, and also for the cases of children who are being abused or neglected.

Lake Shore of Lakes Erie, Ontario or Huron, Taking Sand or Stones From Without Leave.

R.S.O. ch. 270, secs. 3-10.

Two justices required: Secs. 7, 12.

Appeal is to the County Court and the conviction and papers must be transmitted to the clerk of that court.

Land Surveyor, Practising as Without License.

R.S.O. ch. 180. (Similar form under "Medicine.")

Liquor License Act, Offences Under.

Neglecting to Keep License Exposed: R.S.O. ch. 245, sec. 47.

A.B. having a license by wholesale (or a shop, or a tavern, or a vessel license) on _____, at _____, unlawfully and wilfully (or negligently) omitted to expose the said license in his warehouse (or shop, or in the bar-room of his tavern, or in the bar-saloon, or bar-cabin of his vessel, as the case may be).

Neglecting to Exhibit Notice of License: Same statute, sec. 48.

A.B., being the keeper of a tavern (or inn, or house of public entertainment) in respect of which a tavern license has duly issued and is in force, on _____, at _____, unlawfully did not exhibit over the door of such tavern (or inn, etc.) in large letters the words "licensed to sell wine, beer, and other spirituous or fermented liquors," as required by the Liquor License Act.

Sale Without License: Same statute, sec. 72.

A.B., on the day of , A.D. 190 , at , in the county of , unlawfully did sell liquor without the license therefor by law required.

Two justices required unless offence committed in township or incorporated or police village, where one justice may try; Secs. 72, 97, 118.

Keeping Liquor Without License: Same statute, sec. 50.

A.B., on , at , unlawfully did keep liquor for the purpose of sale, barter and traffic therein, without the license therefor by law required.

Two justices required: Secs. 97, 118.

Selling Without License, Second Offence: Same statute, sec. 72.

If the prosecution is for a second offence, insert one of the charges stated above, and add the following:—

And further that the said A.B. was previously, to wit, on the day of , 19 , at the of , before J.D. and E.F., justices of the peace for the of , in the county of , duly convicted of having on the day of , 19 , at the town (or village, etc.) of , in the county of , unlawfully sold liquor without the license therefor required by law (or as the case may be, setting out the previous conviction).

If the charge is for a third offence, add to the above the second conviction in the same form.

Two justices required, except in cases where the offence was committed in township, incorporated or police village or territorial district: Sec. 97, 118.

Sale Under Wholesale License in Less Than Wholesale Quantities: R.S.O. ch. 245, secs. 2(4) and 51(2).

A.B., having a license to sell by wholesale on , at , unlawfully did sell liquor in less quantity than five gallons (or than one dozen bottles of three half-pints each, or than two dozen bottles of three-fourths of a pint each).

Two justices required unless offence occurred in a township, or incorporated or police village, or territorial district: Secs. 97, 118.

Allowing Liquor to be Consumed in Shop: R.S.O. ch. 245, sec. 62.

A.B., having a shop license on , at , unlawfully did allow liquor sold by him (or in his possession), and for the sale of which a license is required, to be consumed within his shop (or within the building of which his shop forms part, or within a building which communicates by an entrance with his shop) by a purchaser of such liquor (or, by a person not usually resident within the building of which such shop forms a part).

One justice may try the case if the offence was committed in a township, or incorporated, or police village. Otherwise two justices required.

Allowing Liquor to be Consumed on Premises Under Wholesale License: R.S.O. ch. 245, sec. 63.

A.B., having a license by wholesale, on , at , unlawfully did allow liquor sold by him (or in his possession for sale) and for the sale of which such license is required, to be consumed within his warehouse (or shop, or within a building which forms part of (or is appurtenant to or which communicates by an entrance with a warehouse or shop, or premises) wherein an article to be sold (or disposed of) under such license,

is sold by retail (*or* wherein there is kept a broken package of an article for sale under such license).

Two justices required unless offence was committed in a township, or village, or territorial district.

Allowing Liquor to be Drunk in Wholesale Shop: Same statute, sec. 80.

A.B., on _____, at _____, being then and there the purchaser of liquor from C.D., who was not licensed to sell the same to be drunk on the premises, did unlawfully drink (*or* cause F.F. to drink) such liquor on the premises of the said C.D., where the same was sold by him to the said A.B., and such drinking was unlawfully with the privity and consent of the said C.D.

Illegal Sale of Liquor by Druggist: R.S.O. ch. 245, sec. 52.

A.B., then being a druggist on _____, at _____, did unlawfully sell liquor for other than strictly medicinal purposes (*or* sell liquor in packages of more than six ounces at one time; *or* sell liquor without the prescription of such liquor signed by a duly qualified medical practitioner required by law, *or* sell liquor without recording the same) as required by the Liquor License Act.

Keeping a Disorderly Tavern: Sec. 81.

A.B., being the keeper of a tavern (*or* ale-house, *or* beer-house, *or* house of public entertainment), situate in the city (*or* town, *or* village, *or* township), of _____, in the county of _____, on _____, in his said tavern (*or* house) unlawfully did sanction (*or* allow) gambling (*or* riotous, *or* disorderly conduct) in his said tavern (*or* house).

Two justices required, *or* one justice and the mayor *or* reeve of municipality.

Harbouring Police Constable on Duty: Sec. 82.

A.B., being licensed to sell liquor at _____, on _____, unlawfully and knowingly did harbour (or entertain, or suffer to abide and remain on his premises) C.D., a constable belonging to a police force, during a part of the time appointed for his being on duty, and not for the purpose of quelling a disturbance or restoring order, or executing his duty.

Compromising or Compounding a Prosecution: Sec. 83.

A.B., having violated a provision of the Liquor License Act on _____, at _____, unlawfully did compromise (or compound, or settle, or offer, or attempt to compromise, compound or settle) the offence with C.D., with the view of preventing any complaint being made in respect thereof (or with the view of getting rid of or stopping, or of having the complaint made in respect thereof dismissed, or as the case may be).

Being Concerned in Compromising a Prosecution: Sec. 83.

A.B., on _____, at _____, unlawfully was concerned in (or a party to) a compromise (or a composition, or a settlement) of an offence committed by C.D. against a provision of the Liquor License Act.

Tampering With a Witness: Sec. 85.

A.B., on a certain prosecution under the Liquor License Act, on _____, at _____, unlawfully did tamper with C.D., a witness in such prosecution before (or after) he was summoned (or appeared) as such witness on a trial (or proceeding) under the said Act (or unlawfully did induce, or attempt to induce C.D., a witness in such prosecution, to absent himself, or to swear falsely).

Refusing to Admit Policeman: Sec. 130.

A.B., on the _____, at _____, being in (or having charge of) the premises of C.D., being a place where liquor is sold (or

reputed to be sold), unlawfully did refuse (or fail) to admit (or did obstruct, or attempt to obstruct E.F., an officer demanding to enter in the execution of his duty (or did obstruct, or attempt to obstruct E.F., an officer making searches in said premises, and in the premises connected with such place).

Officer Refusing to Prosecute: Secs. 129, 130.

A.B., being a police officer (or constable, or inspector of licenses) in and for the _____ of _____, in the county of _____, knowing that C.D. had on _____, at _____, committed an offence against a provision of the Liquor License Act, unlawfully and wilfully did and still does neglect to prosecute the said C.D. for his said offence.

Two justices required.

Order for Destruction of Liquor Seized: R.S.O. ch. 245, sec. 132.

We, E.F. and G.H., two of Her Majesty's justices of the peace for the county of _____ (or C.D., police magistrate of the city of _____), having on the _____ day of _____, 18____, at the township of _____ in said county, duly convicted J.K. of having unlawfully kept liquor for sale without license, do hereby declare the said liquor and vessels in which the same is kept, to wit, (describe the same), to be forfeited to His Majesty, and we (or I) do hereby order and direct that A.B., License Inspector of the _____ of the said county, do forthwith destroy the said liquor and vessels."

Given under our (or my) hands and seals, this _____ day of _____, A.D. 18____, at the _____ of _____, in the said county.

E.F. [L.S.]

or G.H. [L.S.]

C.D. [L.S.]

Inebriate, Notice Prohibiting Sale to: Ontario Stat. 1906. ch. 47, sec. 33.

NOTICE.—Given under section 125 of the Liquor License Act.

To E.F. (and G.H., *several names may be included in one notice*) of the _____ of _____, in the county of _____, a person (or persons) licensed to sell intoxicating liquor under the Ontario Liquor License Act.

I, A.B., of (*residence and occupation*), the wife (or husband, or parent, son, daughter, brother, sister, master, guardian or employer, *as the case may be*) of the person hereinafter named, hereby notify you not to deliver liquor to C.D., of the _____ of _____, in the county of _____, being a person who has the habit of drinking intoxicating liquor to excess.

Take notice that in the contravention of this prohibition, or in case you suffer or permit the said C.D. to linger or loiter in the bar-room or other place upon your premises in which liquor is dispensed you will incur the penalties provided by section 125 of the Liquor License Act.

Dated at _____ this _____ day of _____, A.D. 190 _____.

(Signature.)

This notice may be given by the license inspector: Same statute, sec. 33(3).

Inebriate, Notice to: Same statute, sec. 33(3).

NOTICE.—Given under section 125 of the Liquor License Act.

To C.D. (*name of the inebriate*).

I, A.B., (*name of person giving notice, adding occupation*) of the _____ of _____, in the county of _____, hereby notify you that I have this day given notice to the license holders of the _____ license district of _____ (or to E.F., or to E.F. and G.H., *etc., names of persons notified*), not to deliver liquor to you, you having the habit of drinking liquor to excess.

Take notice that should you directly or indirectly purchase or procure, or attempt to purchase or procure upon the premises of any of the said license holders (or upon the premises of the said E.F., etc., naming the particular license holders notified) or be found lingering or loitering in or about the bar-room or other place in which liquor is dispensed upon such premises you will incur the penalties provided by section 125 of the Liquor License Act.

(Signature.)

NOTE.—These notices may be given by mailing in registered letter: Same sec. (4).

Inebriate, Furnishing Liquor to, After Such Notice: Same statute, sec. 33(5).

That on the day of , 190 , A.B., the wife (or parent, etc.) of C.D., a person who then had the habit of drinking intoxicating liquor to excess, duly gave notice in writing signed by her (or him) to E.F., a person then licensed to sell intoxicating liquor, not to deliver intoxicating liquor to the said C.D.; and within twelve months next after the service of such notice, * the said E.H. unlawfully did deliver (or suffer to be delivered) in or from the place then and there occupied by the said E.F. being a place where intoxicating liquor was authorized to be sold, intoxicating liquor to the said C.D., otherwise than in terms of a special requisition for medicinal purposes signed by a duly qualified medical practitioner. (See sec. 25(1) as to what the medical requisition must contain.)

Inebriate, License Holder Permitting Loitering by: Same statute, sec. 33(6).

*Proceed as in the next preceding form to the * and add the following:—*

And E.F., being then and there the keeper of a licensed tavern after service upon him of the said notice did unlawfully

suffer (or permit) the said C.D. to loiter or linger in and about the bar-room of the said licensed tavern in which liquor was dispensed upon the said licensed premises.

Inebriate, Third Person Providing or Purchasing Liquor for:
Same statute, sec. 33(8).

*Proceed in the form given above to the * and add:—*

And on the day of , 190 , the said A.B., (name) did also duly give notice in writing to the said C.D. in the form and manner required by the statute of the Province of Ontario, 6 Edw. VII. ch. 47, sec. 33, sub-sec. 3, **, and thereafter on , at , G.H. with a knowledge of the said notices having been so given, did unlawfully give (or sell, or purchase for and on behalf of C.D., (or for the use of C.D.) intoxicating liquor.

Inebriate, Himself Procuring Liquor: Same statute, sec. 33(7).

*Proceed as in the above forms to the second * *, and add:—*

And the said C.D. within twelve months after service of the said notices as aforesaid did unlawfully purchase (or procure, or attempt to purchase or procure) intoxicating liquor (or was found unlawfully lingering or loitering) in and about the bar-room of the licensed tavern of E.F. being a place in which liquor was dispensed.

Intoxicated Person, Supplying Liquor to: R.S.O. ch. 245, sec. 76.

E.F., at , on , he being a duly licensed person under the Ontario Liquor License Act, did unlawfully deliver intoxicating liquor to C.D., a drunken person; (or unlawfully permit and suffer C.D., a drunken person to consume liquor upon his premises).

Minors, Supplying Liquor to: Same statute, sec. 78.

E.F., at , on , he being then and there a licensed person under the Ontario Liquor License Act, did unlawfully allow liquor to be supplied on his premises to C.D., a person apparently (or to the knowledge of E.F.) under the age of twenty-one years, (Stat. of 1905, ch. 30, sec. 1).

Minor, Allowing to Loiter in Bar-room: Same statute, sec. 78(4).

E.F., at , on , he being then and there a licensed person under the Ontario Liquor License Act did unlawfully and without proper cause suffer (or permit) C.D., a person apparently (or to the knowledge of the said E.F.) under the age of twenty-one years and not accompanied by his parent (or guardian) and not being a resident or a *bonâ fide* lodger or boarder on the premises of the said E.F. to linger (or loiter) without good and sufficient reason in and about the bar-room on the said premises in which liquor was dispensed.

Minor, Loitering in Bar-room: Same statute, sec. 78(4).

Form may be adapted from the foregoing.

Drunkenness, Permitting on Licensed Premises: Same statute, sec. 76.

E.F., on , at , he being then and there a licensed person under the Ontario Liquor License Act, did unlawfully permit drunkenness (or violent, or quarrelsome, or riotous, or disorderly conduct, *stating what*) to take place on his premises.

Gambling, Permitting on Licensed Premises: Sec. 76.

E.F., at , on , he being then and there a duly licensed person under the Ontario Liquor License Act, did un-

lawfully suffer gambling (or any unlawful game) to be carried on on his premises (state what the gambling or the game was).

Prohibited Hours, Disposing of Liquor During: Statute of 1906, sec. 13.

E.F., at , in his premises (or on, or out of, or from his premises) known as (state the place), being a place where liquor was then and there authorized to be sold, unlawfully did sell (or dispose of) intoxicating liquor during the time prohibited by the Liquor License Act (or by by-law of the municipal council of , or of the license commissioners for the district of , as the case may be) for the sale of the same, to wit, after the hour of seven of the clock in the afternoon of Saturday the day of , A.D. 190 , and before the hour of six of the clock on Monday morning next thereafter without any requisition for medical purposes as required by the said act being produced by the vendee or his agent. (See section 25(1) as to what medical requisition must contain.) Two justices required, unless offence was committed in a township, or village, or territorial district in which case one justice has authority.

Prohibited Hours, Allowing Liquor to be Drunk on Premises During: Same statute, sec. 13.

E.F., at , in his premises known as the , being a place where intoxicating liquor was authorized to be sold, unlawfully did allow and permit * the sale of such liquor upon the said premises during the time prohibited by the Liquor License Act for the sale of the same, to wit, after the hour of seven of the clock in the afternoon of Saturday the day of , A.D. 190 , and before the hour of six of the clock on Monday morning next thereafter **, without the requisition for medical purposes required by the said Act being produced by the vendor or his agent.

OR

• Allow and permit such liquor to be drunk upon the said premises being the same (*etc., proceed as in above form to the * **).

Two justices required unless offence was committed in a township, village or territorial district.

Prohibited Times, Sale at Other: Same statute, sec. 13.

The above forms may be adapted to such charges.

Two justices, except as above mentioned.

Shop License, Sale of Less Than Three Half Pints Under:
R.S.O. ch. 245, sec. 2(3).

E.F. having a shop license under the Ontario Liquor License Act on , at , unlawfully did sell liquor in less than three half pints.

Two justices, except as above mentioned.

Keeping Two Bars: Same statute, sec. 65.

E.F., on , at , in his house or premises duly licensed under the Ontario Liquor License Act and known as the hotel, did unlawfully keep in the said house or premises more than one bar.

Two justices, except as above mentioned.

Prohibited Hours, not Keeping Bar-room Closed During:
Same statute, sec. 66.

A.B., at , on , being then and there the keeper of a licensed tavern in the said city (or town) of , unlawfully did * not keep the bar-room (or room in which liquor was trafficked in) in the said tavern, closed against all

persons other than those permitted to enter the same during the hours (or days on which the sale of liquor was prohibited by law.

Or, same section.

*Did allow certain persons to be present in the bar-room in the said tavern during the hours in (or day on) which the sale of liquor was prohibited by law.

NOTE.—Information must be laid in writing within thirty days after the commission of the offence: R.S.O. ch. 245, sec. 95.

The next day after the offence was committed will be the first day to be counted.

The information may be laid by any person (sec. 95); and need not be sworn (sec. 95).

Only one offence to be included in one information.

The costs are the same as in summary conviction cases (Ontario tariff; see *ante* p. 164), except the license inspector is entitled to the fees mentioned in section 117 of R.S.O. ch. 245, which will be added.

Justices have no power to remit or reduce penalty or suspend punishment: Sec. 88.

License Holder Taking Articles for Liquor or in Pawn: Same statute, sec. 67.

E.F., at _____, on _____, being then and there a person holding a liquor license under the Ontario Liquor License Act did unlawfully * purchase from C.D. certain wearing apparel (or any of the articles mentioned in the above section, stating what) the consideration for which was (or was in part) intoxicating liquor (or the price of intoxicating liquor).

or

*Did unlawfully receive from C.D. certain goods, to wit, (stating what in pawn).

Two justices are required to try this charge.

Bar-tender, Unlicensed: Statute of 1906, sec. 6.

E.F., the keeper of a licensed tavern in the city (or town) of _____, in the Province of Ontario, did on _____, at _____, employ A.B. as bar-tender (or permit A.B. to act as bar-tender) in the licensed premises of the said E.F., the said A.B. not being then the holder of a bar-tender's license.

Medical Practitioner, Giving Requisition Without Stating Particulars: Same statute, sec. 25(2).

or

Giving False Requisition: R.S.O. ch. 245, sec. 74.

License Holder Supplying Liquor on Improper Requisition:
Statute of 1906, sec. 25(1)(3).

Drugging Liquor: Same statute, sec. 26(3)(4).

For other offences see the several clauses of the above statutes.

Forms of information and of convictions and warrants of commitment are given at the end of the R.S.O., 245; see sec. 103, and should be carefully followed.

Bottled Liquor, Mixing or Re-filling Bottle: Ont. St. 1906, sec. 26(1)(4).

A.B., at _____, on _____, being then and there the keeper of a licensed tavern did procure certain bottled liquor (*describing it*) for the purpose of supplying the same to his customers or guests did while the said liquor was on the said licensed premises unlawfully omit to keep such liquor in the bottle in which the same was delivered to him and removed and kept the same in another vessel (or put, or allow, or suffer to be put into such bottle other liquor, or any substance of liquor, stating what); or re-fill, or partially re-fill, the said bottle for the purpose of supplying liquor therefrom to his customers or guests after the

said bottle had been emptied, *or* partially emptied, of the said bottled liquor contained in the said bottle when so procured by him as aforesaid.

Bottle, Tavern or Shop Keeper Using False Label On, etc.:
Same statute, sec. 26(2)(4).

Fines and penalties received are to be paid over as stated in R.S.O. ch. 245, sec. 90.

As to appeals, see sec. 218, *et seq.*

Refer to and follow the special forms of informations, convictions, warrants of commitments, etc., given in the schedule to R.S.O. ch. 245.

As to search warrants for liquor, see secs. 131, 132.

Supplying Liquor to Railway Employee in Uniform: Ont. St. 1906, ch. 30, sec. 244.

A.B., at _____, on _____, did unlawfully sell (*or* give) spirituous *or* intoxicating liquor to C.D., who was then and there a servant *or* employe of (*here name the railway company*), and while he, the said C.D. was actually employed in the course of his duty on a train *or* car (*or* while he the said C.D. was in uniform as such employee, as the said A.B. then well knew.

Supplying Liquor to Railway Employee on Duty: R.S.C. ch. 37, sec. 414.

Railway Employee Being Intoxicated on Duty: Same statute, sec. 245; R.S.C. ch. 37, sec. 413.

A.B., at _____, on _____, was unlawfully intoxicated while in charge of a locomotive engine (*or* an electric motor of railway company, *or* while acting as the conductor of a car *or* train of cars) of the _____ railway company.

*Liquor, Sale of Within Three Miles of Public Works: R.S.O.
ch. 39, secs. 1, 2.*

A.B., on _____, did unlawfully sell (or barter, or exchange, or dispose of) to C.D. (or expose, or have in his possession for sale, etc.), intoxicating liquor at the _____ of _____, such place not being within the limits of a city, town or incorporated village, and being within three miles of a railway then and there in process of construction, the said liquor not being so sold by wholesale, by a licensed distiller or brewer.

Search warrants for such liquor: See secs. 6, 7, 8.

Liquors, Sale of, Near Public Works; Code 150-154.

A.B., at _____ on _____, upon (or after) the day named in a certain proclamation putting in force in the said place an Act respecting the Preservation of the Peace in the Vicinity of Public Works, and while the said proclamation remained in force, did unlawfully at the said _____ of _____, which was within the limits specified in the said proclamation, sell (or barter, or exchange, state for what, or supply, or dispose of) intoxicating liquor (or expose, or keep on hand in his possession intoxicating liquor intended to be sold or bartered, etc.).

See, also, Ont. Stat. 1906, ch. 30, sec. 244.

*Liquor, Offences Under Indian Act in Regard to: R.S.O.
ch. 81, secs. 135-146. See Indian Act.*

Supplying Liquor to Indian: R.S.C. ch. 81, sec. 135.

A.B., at _____, on _____, did unlawfully supply an intoxicant (naming what) to C.D., an Indian and known by the said A.B. to be such.

Two justices required.

Lord's Day Act, Breaches of.

Dom. St. 1906, ch. 27; Con. St. U.C. 1859, ch. 104.

A.B., at _____, on _____, did unlawfully engage on the Lord's Day in a public game or contest, to wit, the game of hockey (*or as the case may be*) for gain (*or for a prize, or reward*).

or

Was unlawfully present at a public game (*etc., as in the above form*).

or

Did unlawfully provide (*or was present at, or engaged in*) a certain performance (*describing it*).

or

At a public meeting elsewhere than at a church, namely (*describe where*) at which a fee was charged for admission.

Excursion On: Sec. 6.

Shooting On: Sec. 8.

Selling Foreign Newspaper On: Sec. 91.

Selling or Purchasing Merchandise On, etc.: Sec. 2.

Carrying On Ordinary Calling On:

The various Acts of the Ontario Legislature as to the Lord's Day have been declared by the Privy Council to be *ultra vires* and inoperative: Atty.-Gen. v. Ham. St. Ry. L.R. (1903) A.C. 524, 7 Can. Cr. Cas. 326; but the Court also decided that the Act of the late province of Canada, Con. Stat. U.C. 1859, ch. 104, relating to the observance of the Lord's Day is still in force in Ontario.

Since then the Dominion Parliament has passed the Lord's Day Act 1906, ch. 27; but by section 14 that statute does not repeal or effect any provisions of Con. Stat. U.C. 1859, ch. 104. Both these statutes are therefore in force in Ontario, and a viola-

tion in Ontario of any of the provisions of either statute is punishable in the way stated in the same. Prosecutions for offences against the Dominion Statute, 1906, cannot be commenced without the leave of the Attorney-General of Ontario. In proceeding under the above Consolidated Statutes a summons must be issued in the first instance and not a warrant of arrest, unless the defendant fails to appear on the summons: Sec. 9.

Prosecutions under Con. Stat. must be begun within one month; and under the Act of 1906 within sixty days. Under section 18 of the Con. Stat. any fine under that Act is to be paid one-half to the prosecutor and one-half to the county or city treasurer. Fines under the Act of 1906 will be paid to the Crown Attorney to be transmitted to the provincial treasurer.

One justice may try all cases under either statute, except charges against corporations, under section 12 of the Act of 1906, in which two justices are required.

The Ontario Legislature has authority to legislate so as to prevent electric railways which are subject to the jurisdiction of the province, from running on Sunday; and by Ont. Stat. 1904, sec. 79, it has so legislated by prohibiting cars to be run on Sundays, with certain exceptions there mentioned; and the conductor in charge of a car of an electric railway running on Sunday, is liable to summary conviction for doing so.

Lunatic, Dangerous.

See "Insane and Dangerous Person."

Machinery, Not Having Couplings, etc., Protected.

R.S.O. ch. 265. *See, also, Threshing Machines (Factories Act).*

Master and Servant Act, Offences Under.

R.S.O. ch. 157; Ont. Stat. 1901, ch. 12.

Wages, Non-payment of: Secs. 9-12, 17.

A.B., on _____, at _____, was engaged by C.D. to work for him the said C.D. as a labourer (or a domestic servant, or as the case may be) at the wages of (state the rate of wages and how payable) and the said A.B. from thence until the _____ day of _____ 190____, continued to work for the said C.D. at the said employment, and on the _____ day of _____ 190____, the said A.B. became entitled to be paid by the said C.D. under said hiring and service the sum of _____, being the amount of wages then due and payable to him by the said C.D., which said overdue wages the said C.D. neglects (or refuses) to pay to the said A.B., although payment has been duly demanded.

The information in wages cases must be on oath or affirmation; and the claim must not exceed forty dollars: Sec. 11.

The order for payment can only be enforced by distress.

Information must be laid within one month after the time the employment ceased or after the last installment of wages fell due: Sec. 12.

See, also, Apprentice.

Marine Stores, Junk, etc.

Dealer in Buying From a Person Under Sixteen Years Old:
Code 431.

IV

From Any Person Between the Times of Sunset and Sunrise:
Code 431(2).

Milk, Frauds in Sale of.

R.S.O. ch. 252.

Mines Act.

Ontario, 1906, ch. 11.

Removing Boundary Marks: Sec. 209.

A.B., at _____, on _____, did unlawfully and without being authorized by, and contrary to the provisions of the Mining Act, 1906, wilfully deface (or alter, or remove, or disturb) a certain stake or post (or boundary line, describing it) placed or made (or a figure or writing by law permitted to be made on a stake or post planted or made, etc.) under the provisions of the said Act, marking the boundary of a certain mining camp of C.D. (describing where situated).

Contravening an Order of the Mining Commission: Sec. 17.

A.B., at _____, on _____, did unlawfully and wilfully refuse to obey a lawful order of the mining commissioner appointed under the Mines Act, 1906, that is to say (set out the order and in what respect it was disobeyed).

Prospecting Without a License: Secs. 84, 103.

A.B., on _____, at _____, and at and on divers days and times since that date did unlawfully explore (or attempt to explore, or occupy, or work) certain Crown lands for minerals otherwise than in accordance with the provisions of the Mines Act, 1906 that is to say (describe what was unlawfully done).

Employing Boys Under Fifteen in Mine: Sec. 192, 196.

A.B., at _____, on _____, did unlawfully employ a boy named C.D., who was then under the age of fifteen years (or did allow a boy named C.D., who was then under the age of fifteen years to be for the purposes of employment) in a mine, to which the Mines Act of 1906 applied, below ground.

Employing Woman or Girl in Mine: Secs. 192, 196.

Employing Boy Under Seventeen in Mine on Sunday (or for More than Forty-eight Hours in any One Week, or for More Than Eight Hours in One Day: Secs. 193, 196.

Neglect to Keep Register of Boys Employed in Mine: Secs. 194, 196.

Paying Wages to Employee in Mine at or in a Public House, etc.: Sec. 200.

Neglect to Fence Abandoned Mine: Sec. 203(1).

See form of charge under Neglect to Fence Hole in Ice, etc.

Keeping Magazine Within Four Hundred Feet of Mine: Sec. 203(2)—(6).

Not Providing Places of Refuge and Manholes for Miners: Sec. 203(13)(14).

Workmen Being Lowered or Hoisted in Mine Contrary to sec. 203(22)(23).

Staking Claim Without License: Sec. 209(6).

See sections 209, 214 as to penalties, etc. Two justices required to try offences under the Act: Secs. 17, 215. Complaint must be laid within three months: Sec. 216.

Fines to be enforced in the manner described: Sec. 225.

See also Mines, Offences Regarding in List of Indictable Offences.

Medicine, Practising Without Registration.

R.S.O. ch. 176, sec. 49.

A.B., on _____, at _____, being an unregistered person within the meaning of the Ontario Medical Act, did unlawfully practise medicine for hire or reward contrary to the said Act by attending professionally and prescribing medicine for one C.D. and also for one E.F.

Milk, Adulteration of.

R.S.O. ch. 252.

Two justices required.

Minors.

Under Eighteen, Supplying Tobacco or Cigarettes, etc., to:
R.S.O. ch. 261. See form under Tobacco.

*Supplying Liquor to or Allowing Minor Under Eighteen to
Loiter in Bar-room. See Liquor Laws.*

*Admitting Minor to Billiard Room. See Billiard Room. See
also under Apprentices; Master and Servant; Juvenile
Offenders; Neglected Children.*

As to extent of authority of parents, teachers and masters
to discipline child, pupil or apprentice, see Code 63, 64.

Mortgagors, Fraudulent Injury to Property by.

Code 529.

Motor Vehicles.

Ont. Stat. 1906, ch. 46.

Driving on Highway Without License: Sec. 2.

A.B., at _____, on _____, was the owner of a motor vehicle known as an automobile which was then and there driven on the highway without * the said A.B. having paid the registration fee and obtained a permit required by section 2 of the Statutes of Ontario, 6 Edw. VII. ch. 46.

or

*Without the said automobile having attached thereto and exposed on the front and back thereof a number of the kind and description required by section 3 of the statute (*proceed as in the above form*).

Not Sounding Alarm at Crossings: Sec. 5.

*Not Carrying Lighted Lamp with Number on it After Dark:
Sec. 5.*

Using a Searchlight: Sec. 5(3).

*Speeding at More than Ten Miles an Hour in or Near Cities,
Towns or Incorporated Villages: Sec. 6.*

Reckless or Negligent Driving: Sec. 7.

Intoxicated Chauffeur: Sec. 9.

*Breach of Provisions as to Passing and Meeting Vehicles:
Sec. 10.*

*Leaving Motor Unlocked on Highway When Not Used: Sec.
14.*

Penalties: Secs. 19, 20.

Constable may arrest offenders without warrant: Sec. 21.

Municipal By-laws.

See "By-laws" ante.

Neglect to Guard Holes Made in the Ice.

Code 287(a).

A.B., at _____, on _____, did cut or make (or cause to be cut or made) a hole (or opening, or place) of sufficient size to endanger human life through the ice on certain water then open and frequented by the public, to wit, the harbour (or the bay, or lake, or river, designating the place) and did unlawfully leave such hole or opening while so in a state dangerous to human life unenclosed by bushes or trees and unguarded by a guard or fence of sufficient height and strength to prevent anyone from accidently driving or walking or skating or falling therein.

Neglect to Guard Abandoned Mines.

Code 287.

Obscenity.

See Indecency.

Pawn Brokers Act, Ontario, Offences Under.

R.S.O. ch. 188.

Neglect to Put up Sign: Secs. 7, 8.

Taking Goods in Pawn From Journeymen: Sec. 18.

Search Warrant for a Certain Form of Goods: Sec. 19.

Selling Pawned Goods Without Exposing a Catalogue: Secs. 26, 27.

In the above cases two justices are required. In all other offences under this Act one justice may act: Sec. 41.

Prosecution must be commenced in twelve months: Sec. 40.

Penalties are to be paid to the municipal treasurer.

See also Pawnbrokers' Act of Canada: R.S.C. ch. 121.

Peace Officer, Obstructing, etc.

See Constable.

Personation at Examination.

Code 409.

See same heading under list of indictable offences.

This offence is either indictable or may be tried summarily by one justice.

Patent Medicines.

Ont. St. 1898, ch. 30.

Pharmacy Act, Offences Under.

R.S.O. ch. 179, amended in 1905, ch. 16, and 1906, ch. 25.

Practising Pharmacy Without Certificate: Sec. 26.

See form for practising medicine ante.

Poison.

Selling Poisons Mentioned in the Statute Without Certificate as Chemist: Sec. 26; Schedule A. to Act.

Chemist Selling Poisons Mentioned in Schedule A, in Bottles or Package not Marked Poison, and With the Seller's Name and Address: Sec. 28.

Chemist Selling Poisons Mentioned in Part I. of Schedule A, Without Making an Entry in a Book in the Form C to the Act, with the Purchaser's Signature to the Entry: Sec. 28.

OR

Selling any of the Drugs or Medicines Mentioned in Ont. St. 1905, ch. 16, sec. 9, Without a Certificate as Chemist.

Pigeon or House Dove, Killing, Wounding or Taking.

Code 393.

At _____, on _____, A.B. did unlawfully and wilfully kill (or wound, or take) a pigeon or house-dove, the property of C.D.

Poisons.

See Pharmacy Act Offences.

Public Buildings, Churches, etc., Doors not Hinged to Open Outwards.

R.S.O. ch. 216.

A.B. (or a company, or as the case may be, giving the name) on _____, at _____, was the owner (or possessor) of a public

hall (or theatre, or church, or other building, naming and describing it) then and there used for holding public meetings or being a place of public resort, in which building the doors were not so hinged that they might open freely outwards.

Two justices required.

Half the fine goes to informant and half to the minor municipality: Sec. 3.

Public Health Laws, Offences Against.

The laws are to be found in the R.S.O. and amendments thereunder noted; and in the Municipal Act, 1903, secs. 550-554; and in the by-laws and regulations passed by the Boards of Health and by the municipal councils under these statutes.

The statutes are: R.S.O. ch. 248; and Ont. Stats. for 1901, ch. 12, secs. 28, 29, 35, and ch. 34; also for 1902, ch. 34; 1903, ch. 29; and 1905, ch. 32.

The statement of the offence in the proceedings must say that the act objected to was done unlawfully; and should follow the words of the statute or by-law or regulation which has been broken, giving time, place and particulars of the act which constituted the offence.

Two justices are required to try a charge under the Health Act.

See also the following headings in the lists of offences:—

Food, Selling Things Unfit for: In list of Indictable Offences.

Animal, Selling Diseased: In list of Indictable Offences.

Food, Selling Things Unfit for: In Summary Convictions list.

Post Office Offences.

R.S.C. ch. 66.

Selling Postage Stamps Without License: Sec. 134.

Using Stamps Previously Used: Sec. 135.

Unauthorized Person Delivering Letters: Sec. 136.

Enclosing Letter in Parcel, etc.: Sec. 123.

Prize Fight.

Code 108.

Engaging in as Principal: Code 105.

A.B., at _____, on _____, did unlawfully engage as a principal in a prize fight.

Attending or Promoting: Code 106.

A.B., at _____, on _____, was unlawfully present as an aid (or second, or surgeon, or umpire, or backer, or as assistant, or reporter, or did advise, or encourage, or promote by, state in what manner) a prize fight between E.F. and G.H. (or between two persons unknown).

Leaving Canada to Engage in: Code 107.

Challenging: Code 104.

Pound Keepers.

Neglecting to Supply Food and Water to Animals Impounded: R.S.O. ch. 272, sec. 23.

or

Neglecting to Make a Return to the Clerk of the Municipality at the Beginning of Each Year as to the Animals Impounded: Secs. 27-29.

Poultry or Geese, Trespassing After Notice.

R.S.O. ch. 272, sec. 3.

Notice must first be given.

FORM OF NOTICE.

Take notice that you are hereby required to prevent poultry (or geese) owned by you from trespassing upon my premises. This notice is given pursuant to section 3 of the Revised Statutes of Ontario entitled an Act Respecting Pounds.

Dated at this 19 .

To A.B., of .

C.D.

FORM OF CHARGE.

A.B. at , on , did unlawfully refuse (or neglect) to prevent certain poultry (or geese) then and there owned by him from trespassing upon the neighbouring premises of C.D. after a notice in writing had been duly served upon him, the said A.B., of their trespass as required by the statute on that behalf.

Prostitutes.

See Disorderly House; Keeping or Frequenting; also Vagrancy.

Public Meeting, Disturbing.

See Disturbing Public Meeting.

Public Parks Act, Offences Against.

R.S.O. ch. 233, sec. 18.

Railway Track, Trespassing on.

Ont. Stat. 1906, ch. 30, sec. 240(1).

A.B., at , on , being a person not connected with the railway or employed by the railway, did unlawfully walk along the track thereof.

Railway.

Entering Train Without Paying Fare: Same statute, sec. 240(2).

A.B. at , on , did unlawfully enter upon a railway train of the railway company with intent fraudulently to be carried upon said railway without paying fare thereon.

or

Did unlawfully and wilfully trespass by entering the railway station (or car, or building, *stating what*) of the said railway company in order to occupy the same for his own purposes.

Obstructing Railway Employee.

Did unlawfully and wilfully obstruct or impede (*stating how*) C.D., an officer of the railway company in the execution of the duties by the said C.D. as such officer or agent upon a train of the said company (or upon the premises of the said company).

Railway Employee, Wilfully Allowing Engine or Car to Stand on Highway for More than Five Minutes at One Time.

R.S.O. ch. 37, secs. 394, 431.

Railway Company.

Not Having Blackboard at Station Giving Information as to Trains: Secs. 395, 431.

Any One Leaving Gate Open at Farm Crossing, or Taking Down Railway Fence or Taking an Animal on the Railway Track: Secs. 407, 431.

Trespassing or Walking on Railway Track: Secs. 408, 431.

Railway Regulations, etc.

Any Person Negligently Violating: Secs. 246, 247.

Damage to Electric Railway: Sec. 248(c).

Selling or Giving Liquor to Railway Employee on Duty or in Uniform: Sec. 244.

Riotous Acts.

Unlawful Assembly: Code 87-89.

A.B., C.D., E.F., with other persons (or A.B., with other persons to the number of three or more), with intent to carry out the common purpose of assaulting one G.H. (or of preventing G.H. from proceeding to his work along the streets of the said of ; or, of causing a breach of the peace; or a disturbance on the public street of ; or of preventing the Toronto Railway Co. from running their cars; or, stating what the common purpose was, it being immaterial whether such purpose was in itself lawful or unlawful) did unlawfully assemble themselves together in such a manner (or, did assemble together and then and there while so assembled did unlawfully conduct themselves in such a manner) as to cause persons in the neighbourhood of such assembly to fear on reasonable grounds that the said A.B. (C.D. and E.F.) with the said other persons so assembled would disturb the peace tumultuously (or, would by such assembly needlessly and without any reasonable occasion provoke other persons to disturb the peace tumultuously).

Riot.

Code 88.

(Proceed as in the next preceding form to the end and then add the following): and being so assembled together did then and there actually begin and continue for a long time unlawfully to disturb the peace tumultuously.

Hindering the Reading of Riot Act: Code 91, 92(a).

At , on , there were divers persons to the number of at least twelve unlawfully, riotously and tumultuously

assembled together to the disturbance of the public peace, whereupon H.J., Esquire, who was then a justice of the peace for the said county of , pursuant to his duty prescribed by the statute in that behalf, duly resorted to the said place where the said unlawful, riotous and tumultuous assembly then was, and as near to the said rioters as he could then safely come then and there, began (or was about) to make the proclamation in the words and manner required by the said statute, and A.B. (and C.D. with others) did unlawfully and with force and arms then and there wilfully oppose (or hinder or hurt) the said H.J., who had then and there begun (or was about) to make the said proclamation whereby, and by means whereof, the said proclamation was not made.

Refusing to Disperse after Reading of Riot Act: Code 92(b).

A.B. (and C.D.), with divers other persons to the number of twelve or more, unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace, whereupon, and while the said A.B. and C.D. and said other persons were so unlawfully, riotously and tumultuously assembled together as aforesaid, H.J., Esquire, then a justice of the peace for the said county of , within whose territorial jurisdiction the said assembly then was, duly resorted to the said place where the said unlawful, riotous and tumultuous assembly then was, and among the said rioters, or as near to them as he could safely come * with a loud voice did duly proclaim and command silence and thereupon did then and there with a loud voice make (or cause to be made) the proclamation in the words and in the manner provided by the statute in that behalf, in these words, that is to say (*here insert the proclamation of which the form is given in Code 91*), and the said A.B. (and C.D.) with said other persons so unlawfully, riotously and tumultuously assembled together as aforesaid, to the number of twelve or more, then and there, notwithstanding the proclamation so made as aforesaid, did unlawfully continue

together for the space of thirty minutes after the said proclamation had been made as aforesaid. (*Or insert instead of the above words after the "the following: then and there began (or was about) to make the proclamation in the words and manner required by the statute in that behalf, when certain persons unknown did unlawfully and with force and arms then and there wilfully oppose (or hinder, or hurt) the said H.J., who had so begun (or was about) to make the said proclamation as aforesaid, whereby and by means whereof the said proclamation was not made, the said A.B. (and C.D.), with other persons to the number of twelve or more so unlawfully, riotously and tumultuously assembled together, as aforesaid, then well knowing that the making of the said proclamation was hindered as aforesaid, did then and there unlawfully continue together for the space of thirty minutes after such hindrance.)*)

NOTE.—The foregoing riotous are indictable only: Justice will hold preliminary enquiry and commit for trial.

Proceedings to Suppress Riot—are described in Code 91, 93, 94; and in R.S.C. ch. 41, sec. 39; and are as follows:—

Reading the Riot Act: Code 91.

When a justice becomes aware that there are twelve or more persons within his jurisdiction unlawfully, riotously and tumultuously come together to the disturbance of the public peace, it is his duty (of his own motion and without waiting to be called upon to do so: *R. v. Penney*, 5 C. & P. 254; *R. v. Kennet*, 5 C. & P. 282), to proceed at once to the place, and either amongst the rioters or as near to them as he can safely come, with a loud voice to command "silence"; and then with a loud voice make the following proclamation, either reading it himself or causing the sheriff or constable or other person to do it in his presence:—

"Our Sovereign Lord the King charges and commands all persons being assembled, immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence, on conviction of which

they may be sentenced to imprisonment for life: God Save the King."

Without these latter words the proclamation will not be valid: *R. v. Childs*, 4 C. & P. 442.

In proceeding to make this proclamation, it is proper that the justice should be accompanied and protected by such police or constables as may be available, while he is performing his duty.

Hindering the Reading of the Riot Act, etc.

If any persons forcibly oppose, hinder or hurt the justice who is about to make the proclamation or while he is making it, it is his duty to direct the police or constable to forthwith arrest such persons; and it is the duty of the police and constables (and all persons called upon to aid them: Code 95) to apprehend such persons and carry them before a justice of the peace for trial upon the charge, the form of which is above given: Code 93; proceeding in the manner prescribed for indictable offences, Chap. IV., *ante*.

No warrant of arrest is necessary. Form of charge to be drawn up is given above.

The justice is also to direct the arrest of all persons who continue together to the number of twelve, for thirty minutes after reading of the above proclamation, or after they know that it was hindered as above mentioned: Code 93(b).

Form of charge for same is given above.

The police and constables are justified in using reasonable force in carrying out these directions and to disperse the mob; using their batons if necessary.

Before proceeding to use force to disperse the mob, there must be a delay of thirty minutes after reading the proclamation and before employing force for that purpose; but if those assembled together continue their riotous conduct, the justice

day of _____, A.D. 19____, before the undersigned, two of His Majesty's justices of the peace in and for the said county of _____ who saith that a riot has taken place and is now continuing at (*describe the locality*), disorderly persons to the number of twelve or more having been and being now unlawfully assembled together at the said place and having begun to disturb and are now disturbing the peace tumultuously.

Sworn before me at the said
_____ of _____ the day
and year first above mentioned. }

A.B.

C.D., J.P.

E.F., J.P.

If upon receiving the above information, the justices are of opinion that the ordinary police force and constables are not sufficient for the preservation of the peace and the protection of the inhabitants and the security of property, they may call out and appoint in writing so many as they think fit, of the householders or other persons (not legally exempt from serving as constables), resident in the territorial division or its neighbourhood, to act as special constables, for such time and in such manner as the justices may deem necessary: R.S.O. ch. 99, sec. 23.

FORM OF APPOINTMENT.

To J.K., of the _____ of _____, in the county of _____
(*occupation*).

You are hereby appointed a special constable in and for the _____ of _____, for the term of _____ days, pursuant to the Revised Statutes of Ontario, chapter 99.

Dated, etc.

C.D., J.P.

E.F., J.P.

The special constables are to be sworn: Sec. 24.

FORM OF OATH.

I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of special constable in the of , without favour or affection, malice or ill will; and that to the best of my power, I will cause the peace to be kept and preserved and will prevent all offences against the persons and properties of His Majesty's subjects; and that while I continue to hold the said office, I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law; so help me God.

Those exempt from service as special constables are clergymen, aged and decrepid persons, and persons under fifteen years old: 5 Burns' Justice 22.

The justices appointing special constables must at once send notice by letter to the Hon. the Provincial Secretary, Parliament Buildings, Toronto, stating that they have appointed special constables under this Act, giving a list of those appointed, and stating fully the facts shewing that it was necessary to take that step: Sec. 25.

Section 26 provides for the justices making orders and regulations, for the more efficient performance of their duties by the special constables so appointed.

Special constables so appointed have the powers and duties of ordinary constables: Sec. 27.

What Force May be Used in Suppressing a Riot.

By Code 48 the justices and constables are justified in using, and in ordering those assisting them to use, such force as reasonably appears necessary to suppress a riot, and as is not disproportioned to the danger reasonably apprehended from continuance of it.

The police (and those assisting them, if so ordered by the justices) may resort to the use of batons or clubs to disperse the rioters; but every reasonable effort to get the crowd to disperse

should first be exhausted. The police and citizens must not be armed with or use firearms.

Payment of Special Constables.

The justices are authorized to make an order on the municipal treasurer for the municipality in which the special constables have been required to serve, for the payment of a sum not exceeding \$1 per diem in favour of each of the special constables: R.S.O. ch. 99, sec. 30, 31.

FORM OF ORDER FOR PAYMENT.

To , Esq.,
 Treasurer of the of .
Pay to special constable appointed by us under the
Revised Statutes of Ontario, chapter 99, the sum of \$,
being for days, during which he served as such special
constable for the of .
Dated, etc.

C.D., J.P.

E.F., J.P.

Calling Out the Militia.

If a riot appears likely to assume such serious proportion, as to be beyond the powers of the civil authorities to suppress, three justices of the peace (one of them being the mayor, or head of the municipality) may by writing require the senior officer of the active militia of the locality (*e.g.*, the Colonel of the city battalion), to call out, with their arms and ammunition, such portion of the active militia as such officer thinks necessary.

The officer of the militia force on its arrival is bound to order the use of such force and means to suppress the riot, as shall be directed by the three justices mentioned; and the militia are protected and justified in obeying, in good faith, the justices' orders, if the same are not manifestly unlawful: Code 49.

As to what force is justifiable, the circumstances of each case will govern; but great care is to be used. At first the mere parading of the military at different strategic points, or where the rioters are gathered, may be sufficient to deter them from further riotous doings. If not, such force as, under the circumstances, appears reasonably necessary and commensurate with the danger to be apprehended, must be used; going even to such extreme measures as firing upon the mob, if ordered by the justices, if it appears to be absolutely necessary for the protection of life or preventing extensive and immediate destruction of property. This, of course, should be a last resort, in order to prevent danger which is apparent and imminent; and is one not likely to be necessary to be resorted to in Ontario.

In all the proceedings above referred to the three justices mentioned are the sole directory authority; and are responsible for what is to be done, and for the orders issued; and although they should confer with the military officers and other authorities, their doing so would be no defence or excuse if the action taken should be wrong. On the justices, and not on the military officers, rests the authority and responsibility for the degree of force to be used; and the military are required by the law to obey the justices' orders.

If, upon a riot taking place, a justice neither reads the Riot Act nor restrains nor apprehends the rioters, it is *prima facie* evidence of criminal neglect of duty, for which he may be indicted: Code 94.

The duties and responsibility of justices under the circumstances, are fully discussed in *R. v. Penney*, 5 C. & P. 254, and *R. v. Kennet*, 5 C. & P. 282.

Riots, etc., Near Public Works.

R.S.O. ch. 38.

Two justices required: Sec. 11.

Rivers and Streams, Obstructing.

R.S.O. ch. 142, secs. 4-8.

A.B., at _____, on _____, did unlawfully throw (or he being then an owner, or occupier of a mill on the stream herein-after mentioned, did unlawfully suffer or permit to be thrown) into the river (naming it), or into a rivulet, or watercourse, describing it) slabs (or waste stuff, or refuse, stating what, or stumps, or shrubs, or tan bark, or waste wood, or leached ashes).

or

Did unlawfully in or across a river (etc., as above) fell timber or standing trees and allow the same to remain across the said river (or stream, etc.).

The proceedings to be followed are mentioned in section 8, and warrant of distress cannot be dispensed with.

Penalty goes one-third to the informer and two-thirds to the municipal treasurer: Sec. 9.

Rivers, Streams and Lakes, Obstructing by Driving Sawlogs.

R.S.O. ch. 143, sec. 3.

See example in preceding form.

Rondeau Park.

R.S.O. ch. 47.

Breach of Government Regulations: Sec. 5.

Regulations Published in Ontario Gazette.

Hunting in Park: Sec. 9(1).

Shooting or Killing Birds Within Two Miles of Park: Sec. 9(2).

Sawlog Cullers Act, Offences Under.

R.S.O. ch. 186.

Culler Making False Measurement: Sec. 16.

A.B., at _____, on _____, he being then and there a culler duly licensed under the Ontario Cullers' Act (or being then and there the holder of a special permit issued by the Commissioner of Crown Lands for the Province of Ontario to act as a culler under the Ontario Cullers Act) and employed as such to measure sawlogs cut upon Crown lands in the Province of Ontario by one C.D. for the purposes of a return to the Crown Lands Department of Ontario, did wilfully and unlawfully undermeasure (or mismeasure, or improperly cull and reject) certain sawlogs (*describing what logs they were, where measured and in what respect they were improperly measured*), which sawlogs were cut upon Crown lands in the Province of Ontario by the said C.D. and which it was the duty of the said A.B. as such culler to measure fairly and correctly for the purposes of said return.

Culler Making False Return: Sec. 14.

Two justices required in above cases.

See also the offence of obstructing a culler under the Act (Dominion), R.S.C. ch. 84, sec. 84, in which case one justice may convict.

Sawing Machine, Not Having Couplings Protected.

R.S.O. ch. 265.

Sheep Killed by Dogs.

R.S.O. ch. 271. See "Dogs and Sheep."

Shops Regulation Act, Offences Under.

R.S.O. ch. 257; Ont. St. 1900, ch. 43; Ont. St. 1901, ch. 36.

Employing Children Under Ten Years of Age: Sec. 6.

A.B., at , on , being the employer in charge of a shop within the meaning of the Ontario Shop Regulation Act, did unlawfully employ therein C.D., a person then under the age of ten years.

Employing Child Under Fourteen Before Seven A.M. or After Ten P.M., Except Saturday, etc.: Sec. 7(1),

Or on Saturday, Before Seven A.M. or After Ten P.M.: Sec. 7(2).

Not Providing Seats for Female Employees: Sec. 11.

Not Providing Eating Room: Sec. 12; or Separate Water Closets: Sec. 13(2); or Fire Escapes: Sec. 15.

Two justices required: Sec. 28.

Prosecution must be begun within two months: Code 32(1).

Fines are to be paid to the inspector: Sec. 31.

Sleigh Runners Less than 4 feet.

Ont. St. 1905, ch. 13, sec. 29.

Street Walker.

See Vagrancy.

Sureties to Keep the Peace.

See Articles of the Peace.

Tame Pigeons, Taking or Killing.

See Pigeons.

Tenant.

Wilful Injuries to Buildings by: Code 529.

Fraudulent Removal of Goods by: 11 Geo. II. ch. 19, sec. 1.
(Imperial statute still in force here.)

Thefts by Juveniles.

Code 800-821. See Juvenile Offenders, ante p. 216.

Theft.

Of Tree or Shrub, etc., from Orchard, etc., Under the Value of Five Dollars: Code 375, see form, ante, p. 131.

Of Anything Under Ten Dollars: Code 771(a. vii). 773(a) with the consent of accused and if he pleads guilty, but not otherwise: Code 778.

Two justices have jurisdiction.

By Juvenile Offender: Code 802.

Two justices have jurisdiction.

Of Domestic Animals Under Twenty Dollars in Value: Code 370.

Of Trees, Sapling or Shrub: Code 374.

A.B., at _____, on _____, did unlawfully steal one maple tree (or as the case may be) of the value of at least twenty-five cents, the same being the property of C.D.

Of Fruit Growing in a Garden: Code 375.

A.B., on _____, at _____, did unlawfully steal a quantity of grapes (or otherwise describe the fruit or vegetable stolen) the property of C.D., which was then and there growing in a certain garden (or orchard) of the said C.D. situated in (describe the place).

Of Domestic Animals, etc.: (Under \$20 Value): Code 370.

A.B., at _____, on _____, did unlawfully steal one dog (or one goose, or three hens, or as the case may be) being a beast (or

bird, or animal) ordinarily kept for domestic purposes (or for profit, or advantage, or ordinarily kept in confinement) the same not exceeding in value the sum of \$20 and being the personal property of C.D.

(Indictable if over \$20 in value.)

Threshing Machines.

Or Wood Sawing Machines, not Protecting Couplings of Shafting: R.S.O. ch. 265.

A.B., on _____, at _____, who was then and there running a threshing machine (or wood sawing, or other machine, describing it) which was connected to a horse (or steam) power by means of a line of shafting, did unlawfully neglect to cause each of the couplings or joints of the said line of shafting to be safely boxed or secured while running with wood, leather or metal covering in such manner as to prevent injuries to persons passing over the same.

Prosecution must be brought within thirty days: Sec. 5.

Fines to be paid, one-half to informant and one-half to the treasurer of the school section where the offence was committed.

Not Providing Spark Arrester On: R.S.O. ch. 278.

Trespass.

R.S.O. ch. 120.

A.B., at _____, on _____, did unlawfully enter into (or come upon, or pass through) certain lands then being the property of C.D., being (describe the property) _____ and being then wholly enclosed (or being a garden or lawn: see Ont. St. 1902, ch. 12, sec. 17) by walking upon (or driving a horse, or cattle over the same, or state in what the trespass consisted).

*Or (see Ont. St. 1903, ch. 19, sec. 545(7)) and after the municipal council of the township of _____ aforesaid had duly

declared by by-law that the (*state what*) boundary line of said land which passed through a marsh or swamp should as regards the said boundary be deemed wholly enclosed within the meaning of section 1 of the Act Respecting Petty Trespasses, and on which posts were then duly put up and maintained along the said boundary line at distances which permitted of each of the said posts being clearly visible from the adjoining post.

Timber Slide Companies Act.

R.S.O. ch. 194.

Impeding Transmission of Timber, etc.: Sec. 50.

A.B., at _____, on _____, did unlawfully resist (or impede, or molest) C.D., a servant of (*name the company*) a company duly empowered by letters patent under the Timber Slide Companies Act for the purposes therein mentioned in the transmission of certain timber through the timber slide owned by the said company at _____ (*describe where*) by (*describe the manner in which the offence was committed*).

Prosecution must be begun within six months: Sec. 55.

Fines are to be paid to the treasurer of the timber slide company affected: Sec. 54.

Timber or Logs.

Manufacturer of , Not Registering His Mark or Not Marking Timber With Same: R.S.C. ch. 725, sec. 11.

Using Registered Mark of Another Person: Sec. 12.

Two justices have jurisdiction.

Complaint must be laid on behalf of proprietor of mark misused: Sec. 12(2).

Tobacco, Supplying to Minors Under Eighteen Years.

R.S.O. ch. 261.

A.B., at _____, on _____, did unlawfully sell (or give, or furnish) to C.D., who was then a minor under the age of eighteen years, tobacco (or cigars, or cigarettes), the said tobacco (etc.) not being sold to the said minor for his parent or guardian under a written request or order of his said parent or guardian.

Traction Engines on Highways, Breach of Regulations as to Speed, Width of Tires, etc.

R.S.O. ch. 242.

Sections 8 and 9 of this statute do not apply to threshing machine engines, or traction engines used in constructing roadways: Ont. St. 1903, ch. 7, sec. 43.

Trade Mark.

Importing Goods Having False: Code 493.

Other Offences: Code 491(6).

Falsely Claiming to Have Royal or Government Warrant:
Code 492.

Trading Stamps, Customer Receiving From Tradesman: Code
508, 335(2), 342.

Selling Bottles Having Trade Mark on Them: Code 490.

A.B., at _____, on _____, did unlawfully sell (or offer, or expose for sale, or traffic in, stating how), certain bottles marked with a trade mark blown (or stamped, or having permanently fixed) thereto, to wit (describe the trade mark) of which trade mark C.D. was then the proprietor without the consent of the said C.D.

Trade Offences, Other.

Code 486, 487.

Offences referred to in the last two paragraphs may be treated either as indictable or tried summarily by one justice: Code 491. See also trade mark offences in list of indictable offences.

Trespass by Walking on Railway Track.

R.S.C. ch. 37, sec. 408.

Vaccination of Children, Compulsory.

R.S.O. ch. 249, secs. 7, 12.

Two justices required.

Vagrancy.

Code 238, 239.

(a) A.B., at _____, on _____, not having any visible means of subsistence, was found unlawfully wandering abroad (or was found lodging in a barn, or outhouse, or in a deserted or unoccupied building, or in a cart or waggon, or as otherwise stated in Code 238(a).

or

(b) Being able to work and thereby (or by other means, stating them) to maintain himself and family, wilfully and unlawfully refused or neglected to do so.

or

(c) Unlawfully did openly expose, or exhibit in a street (or road, or highway, or public place, to wit, state the place), an indecent exhibition (see post, "*Indecent Exhibitions*," stating its nature in general terms).

or

(d) Was unlawfully wandering about and begging (or did unlawfully go from door to door, or place himself in a street, or

highway, or passage, or public place, to wit, *name it*, to beg or to receive alms), without a certificate signed within six months, by a priest, or clergyman, or minister of the gospel, or two justices of the peace, as by law required.

■

(e) Did unlawfully loiter on a public street (or road, or highway, or public place, to wit, *describe where*), and obstruct passengers by standing across the footpath (or by using insulting language), to wit (*state the language used, or state any other way by which any passenger on the way was obstructed*).

or

(f) Did unlawfully cause a disturbance in (or near) a street (or road, or highway, or public place, *describing it*), by screaming (or swearing, or singing, or *by being drunk*, or by impeding or incommoding peaceful passengers. (Note.—The gravamen of this charge is *causing a disturbance by any of the means stated*).

or

(g) by discharging firearms (or by riotous, or disorderly conduct) to wit, by *describe it*, in a street, or highway, in the said of , wantonly and unlawfully disturbed the peace and quiet of the inmates of the dwelling-house of C.D., situate near the said street or highway.

■

(h) Did unlawfully tear down or deface a sign (or break a window, or a door, or a door-plate, or the wall of a house, or of a road, or of a garden, or destroyed a fence, *describing the same*).

or

(i) Being a common prostitute (or night-walker), wandered in the fields adjacent to the of , (or in the public streets, or highways (or lanes, or places of public meetings, or gathering of people, *stating where*), and upon demand being thereupon made of her by C.D., a peace officer of the said of , she unlawfully did not give a satisfactory account of herself.

(j) Was unlawfully a keeper (or inmate) of a disorderly house, to wit, a common bawdy-house (or house of ill-fame, or house for the resort of prostitutes, *see Disorderly House*).

(k) Was unlawfully in the habit of frequenting disorderly houses, or bawdy-houses (or houses of ill-fame, or houses for the resort of prostitutes) and upon being required by C.D., a peace officer, did not give a satisfactory account of herself.

(l) Having no peaceable profession or calling to maintain himself by, for the most part supports himself by gaming (or by crime, or by the avails of prostitution).

Prosecutions must be begun within six months: Code 1141.

Veterinary Surgeon, Practising Without Authority.

R.S.O. ch. 184.

Wages, Non-payment of.

R.S.O. ch. 157, sec. 11. *See Master and Servant.*

The word "unlawfully" must be used in framing all charges: Circuit Companion 55.

Weapons.

Carrying, Two or More Persons: Code 116.

A.B. and C.D., at _____, on _____, being together did both of them then and there openly carry offensive weapons, to wit (*state what*) in a public place, to wit (*state where*), in such a manner and under such circumstances as were calculated to create terror and alarm (*state the manner and circumstances*).

Two justices required.

"Weapon" is defined by Code 2(24).

Carrying Pistol or Air Gun: Code 118.

A.B., on _____, at _____, did unlawfully have upon his person a pistol (or air gun) elsewhere than in his own dwelling-house, shop, warehouse or counting house, to wit (*state where*): the said A.B. not then being a justice, or a public officer, or a soldier, sailor or volunteer in His Majesty's service, then and there on duty, or a constable or other peace officer; and the said A.B. not then and there having a certificate of exemption as required by the statute in that behalf issued by a justice of the peace, and not having at the said time reasonable cause to fear an assault or other injury to his person, family or property.

Selling a Pistol, etc., to a Minor: Code 119.

A.B., on _____, at _____, did unlawfully sell (or give) a pistol (or air gun, or certain ammunition for a pistol, or air gun) to a minor under the age of 16 years, to wit, to (*name the minor*).

Selling a Pistol or Air Gun Without Keeping a Record: Code 119(2).

A.B., on _____, at _____, did unlawfully sell a pistol (or an air gun) to C.D. without keeping a record of such sale, and the date thereof, and the name of the said purchaser thereof, and of the name of the maker of the said pistol (or air gun) or of some other mark by which the said pistol (or air gun) might be identified.

Having Weapon on the Person When Arrested: Code 120.

A.B., on _____, at _____, having been then and there arrested on a warrant issued against him by C.D., Esquire, a justice of the peace in and for the _____ of _____, for an offence, to wit (*state the offence*); (or having been then and

there duly arrested while committing an offence, to wit, *state the offence*), did then and there unlawfully have upon his person when so arrested, a pistol (*or an air gun*).

Two justices required.

Pointing Firearm (Loaded or Not) at any Person: Code 122.

A.B., at _____, on _____, did without lawful excuse, unlawfully point at C.D., a firearm (*or an air gun*).

Two justices required.

Carrying, or Having, or Selling Sheath Knife, etc.: Code 123.

A.B., at _____, on _____, did unlawfully carry about his person a bowie-knife (*or dagger, or dirk, or metal knuckles, or skull cracker, or slung shot, or other offensive weapon of the character, stating what*); (*or did unlawfully and secretly carry about his person an instrument loaded at the end; or did sell, or expose for sale, a bowie-knife, or any of the weapons above enumerated, naming it*), or that A.B., on _____, at _____, being then and there masked (*or disguised*), did unlawfully, and while so masked (*or disguised*) carry (*or have in his possession*), a firearm (*or air gun*).

Two justices required.

Carrying Sheath Knife: Code 124.

A.B., at _____, on _____, was found in the town (*or city*) of _____ carrying about his person a sheath knife, he, the said A.B. not being thereto required by his lawful trade or calling.

Two justices required.

Refusing to Deliver Weapon to a Justice: Code 126.

A.B., at _____, on _____, being then and there attending (*or on his way to attend*) a certain public meeting at (*describe*

(d) did unlawfully decline and refuse to deliver up peaceably and quietly to C.D., a justice of the peace for the said of , within whose jurisdiction the said public meeting was then appointed to be held, upon demand then and there duly and lawfully made by the said justice of the peace, a certain offensive weapon, to wit, a pistol (*or describe the weapon*) with which he, the said A.B., was then armed (*or which he, the said A.B., then had in his possession*).

The justice may on the spot record the refusal and fine the offender \$8, or he may commit him for trial: Code 126(2).

If fine imposed it may be enforced as described, *ante*, p. 167.

Having Weapon Near Public Works: R.S.O. ch. 38, sec. 3(1).

That on , being upon (*or after*) the day fixed by proclamation of the Lieutenant-Governor of the Province of Ontario in Council declaring the several places within the limits whereof a railway, the work on which was then being carried on by an incorporated company, to wit (*name the company*), was then in process of construction, wherein the said Lieutenant-Governor deemed it necessary that the R.S.O. ch. 8, should be in force, A.B. at , being a place within the said limits in which the said statute was then in force did unlawfully have in his possession or under his control a gun (*or any other weapon mentioned in the above statute, describing it*), he, the said A.B., not being a justice of the peace or a public officer or a soldier sailor or volunteer in His Majesty's service on duty, or a constable or a police officer, and the said A.B. not then having a certificate of exemption from the operation of section 3 of the said act as provided thereby, and not having at the said time reasonable cause to fear an assault or other injury to his person, family or property.

Two justices required: Sec. 11.

The weapon is to be seized by any justice of the peace or constable and forfeited to His Majesty's use: Secs. 6, 10.

As to search warrants see section 8.

Similar charge in regard to Dominion Public Works: Code 142-146.

Possessing Weapons Near Public Works: Code 142, 145, 146.

A.B., who was at the time hereinafter mentioned, employed upon or about a certain public work within the of being a place where the statute called an Act respecting the Preservation of the Peace in the Vicinity of Public Works was then lawfully in force by proclamation, did upon (or after) the day named in the proclamation by which the said Act was brought into force at the said of , unlawfully keep or have in his possession (or under his care or control) within the said of , a certain weapon, to wit, a dirk (or describe the weapon).

Concealing Arms near Public Works: Code 147.

A.B., within the of , being a place where the statute known as an Act respecting the Preservation of the Peace in the Vicinity of Public Works was then lawfully in force, did unlawfully and for the purpose of defeating the lawful enforcement of Part III. of the Criminal Code of Canada, receive (or counsel, or aid in receiving, or concealing, or procure to be received or concealed) within the said place a certain weapon, to wit, a dirk (or describe the weapon) then belonging to (or in the custody of) C.D. a person then and there employed on or about a certain public work (describing it) then being prosecuted at the said of .

Weeds, Neglecting to Cut and Other Offences.

R.S.O. ch. 279, sec. 9(1); Ont. Stats. 1902, 1904.

Weights and Measures Act, Offences Under.
R.S.O. ch. 52.

Wife Desertion, Order for Maintenance.

R.S.O. ch. 167. *See Husband and Wife.*

Wilful Injuries.

To Property: Code 509, 540, 541.

*Injuring Goods on Railway, Ship or in Warehouse, etc.:
Code 519.*

A.B., at _____, on _____, did unlawfully and wilfully and without legal justification or excuse and without colour of right (*see Code 541*) * destroy (*or damage, stating how*) a certain box (*or package, or barrel, or crate, describing it*) containing certain goods, to wit (*state what*) which was then in or about the railway station (*or in a ship called, naming it, or in a warehouse of C.D.*) at the said _____ of _____ with intent unlawfully to obtain (*or injure*) the contents thereof.

or

* Drink (*or wilfully spill, or allow to run to waste*) certain liquor, to wit (*state what*), which was then in or about the railway station (*or in a ship, naming it, or in a warehouse of C.D.*) at the said _____ of _____.

**Telegraph, Telephone, Fire Alarm, or Other Electric Wire,
Attempting to Injure: Code 521(2).**

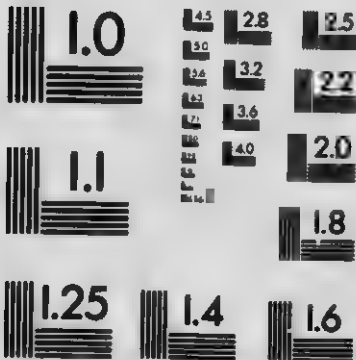
A.B., at _____, on _____, did unlawfully and wilfully and without legal justification or excuse and without colour of right, attempt to (*describe any of the offences mentioned in Code 521 (a) or (b).*

Harbour Bar, by Removing Earth or Stone, etc.: Code 527.



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Offences, Boundary Posts, etc.

A.B., at _____, on _____, did unlawfully and wilfully and without legal justification or excuse and without colour of right, destroy (or damage, *stating how*) a certain fence (or a wall, or gate, or a post, or stake then planted or set up) on a certain land (or marsh, or swamp, or land covered by water, or as the boundary line of certain land, or in lieu of a fence to said land, etc.), which land was then the property of C.D., and situated (*describe it*).

Trees, etc.: Code 533.

Vegetable Productions in Gardens, etc.: Code 534.

A.B., at _____, on _____, did unlawfully and wilfully and without legal justification or excuse and without colour of right, destroy (or damage with intent thereby to destroy, *stating what damage was done*) a certain vegetable production, to wit (*state what*) the property of C.D., and which was then growing in a certain garden (or orchard, or nursery grounds, or house, or hot-house, or greenhouse, or conservatory) of the said C.D. situate (*describe the place and also how injury done, as, for instance, by uprooting it*).

Vegetable Productions Elsewhere than in Garden: Code 535.

Dog, Bird or Animal Other than Cattle: Code 537.

A.B., at _____, on _____, did unlawfully and wilfully and without legal justification or excuse and without colour of right, kill (or maim, or wound, or poison, or injure) a dog (or any animal not being cattle, *describing it*).

Wilfully Impeding the Saving of Wreck: Code 524(2).

Two justices of the peace required to try the last mentioned offence.

By tenants, mortgagors, or to Railways, or Mines, or Oil Wells, or by Explosions are indictable offences. See list of indictable offences under these headings.

Not Otherwise Provided for: Code 539.

A.B., at , on , did unlawfully and wilfully and without legal justification or excuse and without colour of right, commit damage (or injury, or spoil) to certain real (or personal) property, to wit, belonging to C.D. (stating what property and how the damage or injury was done).

Wood-sawing Machine, etc., Couplings Unprotected.

R.S.O. ch. 265. See Threshing Machines.

Workmen, and Others, Intimidation with Respect to.

Code 501(a).

A.B., at , on , wrongfully and without lawful authority, with a view to compel C.D. to abstain from employing E.F., as a workman, whom he, the said A.B., had a lawful right to so employ (or to compel C.D. to employ G.H., as a workman, whom he, the said A.B., had the lawful right to abstain from so employing; or to compel the said C.D. to increase or to abstain from diminishing the rate of wages of his workmen; or to compel J.K. to abstain from working for C.D.); did unlawfully * use violence to the said C.D. (or the said J.K.), or to the wife, or children of the said C.D. (or J.K.), or * injure the property of the said C.D. or J.K. (set out the acts of violence, or the injury done).

or (b).

* Intimidate the said C.D. (or J.K.) by threats to (proceed as in the preceding form).

or (c).

• Persistently follow the said C.D. (*or J.K.*) from place to place.

or (d).

• Hide certain tools then owned or used by the said C.D. (*or J.K.*) or deprive the said C.D. (*or J.K.*, *or hinder the said C.D.*, *or J.K.*) in the use of certain tools (*etc.*).

or (e).

• With one (*or more*) other persons follow the said C.D. (*or J.K.*) in a disorderly manner in a street in of .

or (f. Picketting.)

• Beset or watch the house in which the said C.D. (*or J.K.*) resided (*or the mill or factory, or other place, where the said C.D., or J.K.*) then worked or carried on business (*or happened to be*).

Similar Offences: Code 503.

Two justices required in any of these cases.

Workmen Leaving Employment Without Repaying Advances.

Ont. St. 1901, ch. 12, sec. 14.

A.B., at , on , entered into an agreement with C.D. under which the said A.B. did then and there receive from the said C.D. (*or from E.F., the agent of the said C.D.*) as an advance of wages the sum of (*or a railway ticket from* to , to enable him, the said A.B., to reach the place at which he then and there engaged to perform labour (*or other service stating what*) for the said C.D. and thereafter, to wit, on the day of , at the of etc., the said A.B. without the consent of his employer, the said C.D., did unlawfully leave the said employment before the said money (*or the cost of the said transportation*) so advanced as aforesaid had been re-paid.

Wreck,

Includes the cargo, stores, or tackling and all parts of a vessel which has been wrecked and also the property of a shipwrecked person: Code 2(41).

For a statement of the various offences in connection with a wreck, which may be tried by two justices of the peace, see Code 431

TARIFF OF COSTS.

In cases under the Criminal Code or other Dominion laws:
Code 770.

(Justices' Fees.)

1. Information or complaint and warrant or summons ..\$0.50
2. Warrant where summons issued in the first instance .. 0.10
3. Each necessary copy of summons or warrant 0.10
4. Each summons or warrant for witness (only one summons on each side to be charged for in each case, which may contain any number of names) 0.10
5. Information for warrant to arrest witness and warrant. 0.50
6. Each necessary copy of summons or warrant for witness 0.10
7. For every recognizance 0.25
8. For hearing and determining case 0.50
9. If case lasts over two hours 1.00
10. Where two justices are required to hear the case the associate justice is also entitled to a similar fee, but if one justice can lawfully hear the case there is only one fee even if other justices assist.
11. For each warrant of distress or commitment 0.25
12. For making up Record of Conviction, in those cases where it is ordered to be returned to the session or on certiorari 1.00
But in all cases which admit of a summary proceeding before a single justice and wherein no higher penalty than \$20 can be imposed, the fee for making out the conviction is 0.50
13. For copy of any paper connected with any case, per folio of 100 words 0.05
14. For every bill of costs when demanded to be made out in detail 0.10
(Items 13 and 14 to be charged only when there has been an adjudication.)

(Constables' Fees.)

In cases under Dominion laws.

1. Arrest of each individual upon a warrant\$1.50
2. Serving summons 0.25
3. Mileage to serve summons or warrant per mile (one way) necessarily travelled 0.10
4. Same mileage when service cannot be effected, but only upon proof of due diligence.
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in the prisoner's conveyance (the constable's expenses not included as the mileage covers same) 0.10
6. Attending justices on the trial for each day necessarily employed in one or more cases, when engaged less than 4 hours. 1.00
7. If the case or cases lasted more than 4 hours..... 1.50
8. Mileage travelled to attend trial before justices (when public conveyance can be taken only reasonable disbursements to be allowed) one way per mile. 0.10
9. Serving warrant of distress and returning same..... 1.00
10. Advertising under distress warrant 1.00
11. Travelling to make distress, or search for goods to make distress when no goods found (one way) per mile... 0.10
12. Appraisements, whether made by one appraiser or, more, 2c. on the dollar on the value of goods.
13. Commission on sale and delivery of goods, 5c. on the dollar of net proceeds.

(Witnesses' Fees.)

In cases under Dominion laws.

1. Each day attending trial\$0.75
2. Mileage travelled to attend trial (one way) per mile.. 0.10

TARIFF OF COSTS.

In cases under any Ontario statute or law.

(Justices' Fees: R.S.O. ch. 95.)

1. For information and warrant for apprehension, or for information and summons\$0.50
2. For each copy of summons to be served on defendant or defendants 0.10
3. For every subpoena, only one subpoena on each side to be charged for 0.10
4. For every recognizance (only one to be charged in each case) 0.25
5. For information and warrant for surety for the peace or for good behaviour (to be paid by the complainant) 0.50
6. For warrant of commitment for default of surety to keep the peace or for good behaviour (to be paid by complainant) 0.50
7. For hearing and determining the case 0.50
8. Where one justice alone cannot lawfully try the case an additional fee for the hearing to be allowed the associate justice 0.50
9. For warrant to levy distress 0.25
10. For making up record of conviction when the same is ordered to be returned to the sessions or on certiorari. 1.00
11. But in all cases of summary proceeding before one justice and wherein no higher penalty than \$20 can be imposed, the fee for the conviction is 0.50
12. For copy of any paper connected with any trial per folio of 100 words 0.10
13. For every bill of costs (when demanded to be made out in detail) 0.10
(Items 12 and 13 to be only chargeable when there is a conviction.)

(Constables' Fees under Ontario laws: R.S.O. ch. 101.)

1. Arrest of each individual upon a warrant\$1.50
2. Serving summons or subpoena 0.25
3. Mileage to serve summons, subpoena or warrant, per mile (one way) 0.13
4. Mileage when service cannot be effected, upon proof of due diligence. 0.13
5. Mileage taking prisoner to gaol, exclusive of disbursements necessarily expended in the prisoner's conveyance only. 0.10
6. Returning with prisoner after arrest—conveyance or railway fare for prisoner only.
Only reasonable disbursements to be allowed and public conveyance to be used when available.
7. Attending justices on trials, etc. for each day necessarily employed in one or more cases. 1.50
16. Serving distress warrant and returning same 1.50
17. Advertising under distress warrant 1.00
18. Travelling to make distress or to search for goods to make distress if no goods found per mile (one way).. 0.13
19. Appraisal of goods distrained, whether by one appraiser or more, 2c. on the \$ of the value of the goods.
20. Catalogue, sale and commission and delivery of goods. 5c. on the \$ of the net proceeds.
21. Executing search warrant 1.50

(Witnesses' Fees, in cases under Ontario laws.)
R.S.O. ch. 95, sec. 4.

Each day's attendance before the justice to give evidence,
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Mileage, over ten miles travelled 0.10

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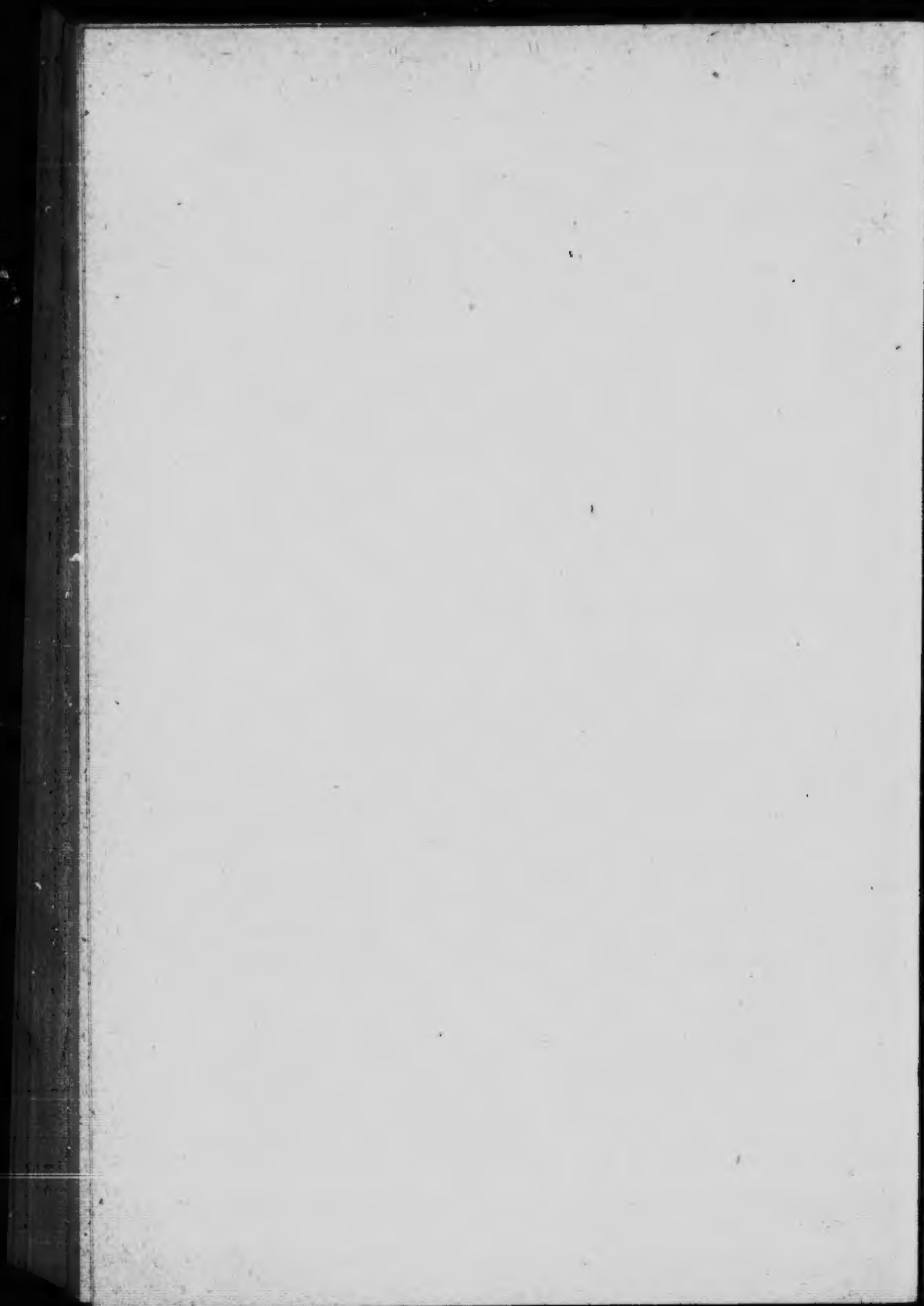
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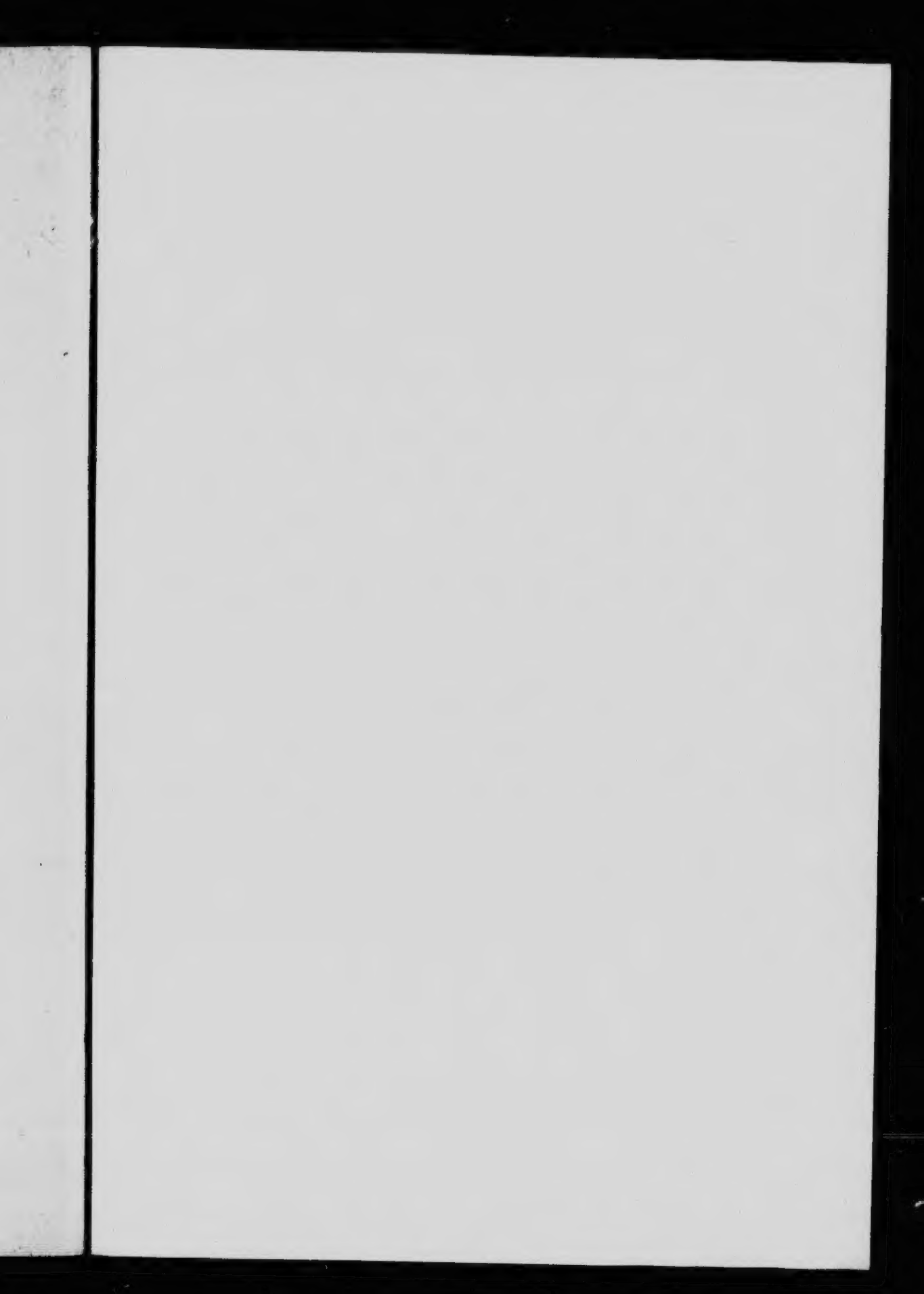
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